



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRYSTAL RIVER COURT LTD. and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPC, FFL, CNC, AAT, AS

Introduction

This hearing was scheduled to deal with cross applications. The tenant had applied to cancel a One Month Notice to End Tenancy for Cause (“1 Month Notice”); and orders requiring the landlord to allow access to the tenant(s) or their guests; and, authorization to permit subletting. The landlord applied for an Order of Possession for cause.

At the hearing, an agent appeared for the landlord and one of the co-tenants appeared, referred to by initials DF.

At the outset of the hearing, I explored service of the hearing materials upon each other.

Where an applicant files an Application for Dispute Resolution under the Act, the applicant is required to complete the process by serving the proceeding package upon the respondent, as provided under section 52(3) of the Act [*Starting proceedings*].

DF testified the tenant’s Application for Dispute Resolution was not served upon the landlord. The landlord’s agent confirmed that to be accurate. DF was of the position the tenancy needs to end and she did not want to dispute the 1 Month Notice; rather, the other co-tenant, referred to by initials BG, had filed to dispute the 1 Month Notice but he did not serve it upon the landlord.

DF stated that she understands BG and the other occupants of the rental site are preparing to move out of the rental site next week.

I accept the consistent submissions before me that the tenant did not serve the landlord with the Tenant’s Application for Dispute Resolution.

In these circumstances, I found the tenants did not sufficiently complete the process for starting a proceeding and I declined to further consider the Tenant's Application for Dispute Resolution. As such, I informed the parties that I would consider the 1 Month Notice undisputed. DF had no objection to this.

I proceeded to hear the parties with respect to determining whether the landlord is entitled to Order of Possession based upon an undisputed 1 Month Notice under the Landlord's Application for Dispute Resolution.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for cause?
2. Award of the filing fee.

Background and Evidence

I heard undisputed evidence that the tenancy started on December 1, 2016. The monthly rent was initially set at \$475.00; however, with notices of rent increase, the rent has been increased to \$526.31 payable on the first day of every month.

Co-tenant DF moved from the rental site in February 2020 and co-tenant BG continued to occupy the rental site; however, DF remains a co-owner of the manufactured home on the rental site and the parties continued to recognize DF as a tenant. BG subsequently permitted other occupants to move into the manufactured home, along with their pets.

On September 25, 2020 the landlord issued a One Month Notice to End Tenancy for Cause ("1 Month Notice") to the tenants. The landlord provided a copy of the 1 Month Notice as evidence for this proceeding. The 1 Month Notice is in the approved form and all three pages were served by: posting to the manufactured home door on September 25, 2020 and sending a copy to each tenant via registered mail on September 25, 2020. The landlord provided the registered mail receipts, including tracking numbers, as proof of service. DF confirmed receipt of the 1 Month Notice by registered mail.

The 1 Month Notice provided to me was duly signed, dated and completed, including reasons for ending the tenancy and details of cause. The landlord's most significant cause for concern is the significant interference and/or unreasonable disturbance being caused to other tenants in the manufactured home park by the occupants that BG permitted to move into the manufactured home. DF accepted that it is very likely that

the other tenants in the park have been unreasonably disturbed by the occupants as she, herself, has been threatened with physical harm by one of the occupants which resulted in intervention by the police and she no longer goes to the site for own safety.

The landlord's agent acknowledged that monies were accepted for "use and occupancy only" for the month of December 2020 and this was communicated to the tenant by way of a receipt.

The landlord requested an Order of Possession effective as soon as possible.

DF accepted that the tenancy needs to end but requested that the Order of Possession be effective December 31, 2020 in recognition the landlord accepted monies for the entire month and she needs to remove her possessions from the site after the occupants leave.

Analysis

Where a landlord seeks to end a tenancy for cause, the landlord must do so by serving the tenant with a 1 Month Notice, as provided under section 40 of the Act, in the approved form. In this case, it is undisputed that the landlord served the tenants with a 1 Month Notice by registered mail sent on September 25, 2020. Upon review of the 1 Month Notice, I find it is duly signed, dated and includes reasons for ending the tenancy, as required under section 45 of the Act.

I note that the effective date appearing on the 1 Month Notice is incorrect and should read October 31, 2020 in keeping with the notice requirement of section 40. Where an effective date is incorrect, it automatically changes to comply and does not invalidate the Notice, as provided under section 46 of the Act.

Where a tenant is in receipt of a 1 Month Notice, the tenant has 10 days after receiving the 1 Month Notice to dispute it by filing an Application for Dispute Resolution and serving the Application for Dispute Resolution, along with other required hearing documents, upon the landlord. If a tenant does not dispute the 1 Month Notice, section 40(5) of the Act provides that the tenant is "conclusively presumed" to have accepted the tenancy will end and must vacate the rental site by the effective date of the 1 Month Notice. As found previously in this decision, the tenants did not sufficiently complete the dispute process and the 1 Month Notice is considered undisputed. As such, I find the tenants conclusively presumed to have accepted that the tenancy would end on October 31, 2020.

The tenant(s) continue to hold possession of the rental site and the landlord seeks an Order of Possession. Section 48(2)(b) of the Act provides:

(2) A landlord may request an order of possession of a manufactured home site in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

I am satisfied that all of the criteria of section 48(2)(b) have been met and I provide the landlord with an Order of Possession.

Considering the landlord accepted monies for use and occupancy of the site for the month of December 2020, I provide the landlord an Order of Possession effective at 1:00 p.m. on December 31, 2020 to serve and enforce.

I also award the landlord recovery of the \$100.00 filing fee paid by the landlord for the Landlord's Application for Dispute Resolution. The landlord is provided a Monetary Ordre in the amount of \$100.00 to sere and enforce.

Conclusion

The landlord is provided an Order of Possession effective at 1:00 p.m. on December 31, 2020.

The landlord is provided a Monetary Order in the amount of \$100.00 to recover the filing fee paid by the landlord for the Landlord's Application for Dispute Resolution.

The tenant's Application for Dispute Resolution was not served upon the landlord and I decline to give it further consideration.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: December 17, 2020

Residential Tenancy Branch