Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CEDAR CREEK MHP
and [tenant name suppressed to protect privacy]
DECISION

Dispute Codes CNC-MT, FFT, MNDCT, OLC, RP

Introduction

The tenant applied

1. to dispute and cancel a One Month Notice to End Tenancy for Cause ("Notice") pursuant to section 47 of the *Manufactured Home Park Tenancy Act* ("Act"), and, to apply for more time in which to dispute the Notice, pursuant to section 59 of the Act,
2. for an order to require the landlord to comply with the Act, the regulations, or the tenancy agreement, pursuant to section 55 of the Act,
3. for regular repairs, pursuant to sections 26 and 55 of the Act,
4. for compensation, pursuant to section 60 of the Act, and
5. to recover the cost of the application filing fee, pursuant to section 65 of the Act.

Both parties attended the hearing on January 29, 2021, which was held by teleconference. No issues of service were raised by the parties.

Preliminary Issue: Dismissal of Claims Unrelated to the Notice

Rule 2.3 of the *Rules of Procedure,* under the Act, states that claims made in an application must be related to each other. It further states that an arbitrator may use their discretion to dismiss unrelated claims with or without leave to reapply.

Having reviewed the tenant's application, I find that the claims other than the application to dispute the Notice are unrelated to this central claim. The most important matter that must be dealt with is determining whether this tenancy will continue.

I explained to the parties that I would be dismissing the tenant's' claims 2 to 4, above, with leave to reapply. As such, this decision will only address claims 1 and 5, above.

Issues

1. Is the tenant entitled to an extension of time in which to dispute the Notice?
2. If yes (to Issue 1), is the tenant entitled to an order cancelling the Notice?
3. If not (to Issue 2), is the landlord entitled to an order of possession?
4. Is the tenant entitled to recover the cost of the application filing fee?

Background and Evidence

I have only reviewed and considered oral and documentary evidence meeting the requirements of the *Rules of Procedure,* to which I was referred, and which was relevant to determining the issues in the application. Only relevant evidence needed to explain my decision is reproduced below.

While there was no copy of the Notice submitted into evidence, the landlord (C.B.) provided information that was contained on the Notice and the tenant did not dispute that information (except for the date on which the tenancy was indicated to end). The landlord testified that the Notice was served on October 24, 2020 and attached to a mailbox in which the tenant receives the newspaper. The tenant confirmed that he found the Notice “later in the day” on the 24th of October.

The second page of the Notice indicated, according to C.B.’s recollection, that the Notice was being issued because the tenant “failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.”

The tenant applied for dispute resolution on November 6, 2020, which was beyond the ten days in which he was required to make an application for dispute resolution. In his Application, the tenant requested more time to dispute the Notice. In the section of the Application which states, “Please describe why you are filing after the dispute period,” the tenant submitted as follows (reproduced as written):

> I did not intially notice the title of the first page, saw that the out by Date was 01 Jan 2021, I had been previously working on this form as a 2 month notice, due to date listed. I was confused, on my responce time as a result. I am DISABLED with PTSD due to Military Service overseas, getting extremely stressed by this & attempting to get assistance with this form via long distance, my Service Dog is attempting to Calm me. Thus this has been slow going, due to stress levels. I am recognised by C.R.A. & V.A.C. as being Disabled.

During the hearing, the tenant and his assistant essentially repeated the written submission. They also referenced the three-day deeming provision in respect of the service of documents.

For the reasons set out below in respect of the late filing of the tenant's application for dispute resolution, I will not reproduce the remainder of the testimony or submissions.

Analysis

The landlord issued the Notice under section 40 of the Act. Section 40(4) of the Act states that a tenant "may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice." Section 40(5) of the Act states that if a tenant does not dispute the notice within 10 days after they receive the Notice that they are "conclusively presumed to have accepted that the tenancy ends on the effective date of the notice."

In this dispute, the tenant testified that he received the Notice on October 24, 2020. While he or his assistant referenced the three-day deeming provision (section 83(d) of the Act), the deeming provision only applies when there is no evidence that the tenant did not receive the document earlier or at another date. In this case, the tenant provided oral evidence that he in fact received the Notice on October 24, 2020. Thus, he had until November 4, 2020 (which is ten days later, beginning on October 25, 2020) in which to make an application for dispute resolution.

Section 59(1) of the Act permits an arbitrator to extend a time limit under the Act "only in exceptional circumstances."

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.

While I fully understand that the tenant suffers from PTSD and is under extreme stress, these are not, I find, reasons that give rise to exceptional circumstance warranting an extension of time. Similarly, that he "did not initially notice the title of the first page" is simply an oversight that I cannot find to be an exceptional circumstance justifying an extension of time under section 59(1) of the Act.

For these reasons, having found that there are no exceptional circumstances for why the application was filed beyond the required statutory deadline, I am unable to extend the time in which the tenant was permitted to dispute the notice. Accordingly, I must apply section 40(5) of the Act which results in there being a conclusive presumption that the Notice was accepted.

Section 48(2)(b) of the Act permits a landlord to request and obtain an order of possession of a manufactured home site when 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. Therefore, I dismiss the tenant's application and grant the landlord an order of possession.

That having been said, it is my hope (based on the reluctance of the landlord to issue the Notice in the first place) that the parties can somehow reach a mutually agreeable resolution of this matter.

Conclusion

I dismiss the tenant's application, without leave to reapply. (Except, as where noted above, the remaining issues are dismissed with leave to reapply.

I grant the landlord an order of possession, which must be served on the tenant and which is effective February 28, 2021. This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

This decision is made on authority delegated to me under section 9.1 of the Act.

Dated: January 29, 2021

Residential Tenancy Branch