



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, MNRT, RR, RP, LRE, OLC, FFT, CNC

Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a One Month Notice to End Tenancy for Cause, for monetary compensation for loss or other money owed, I want to be paid back for the cost of emergency repairs, I want to reduce rent for repairs, services or facilities agreed upon, but not provided, I want repairs made to the manufactured home, I want to suspend or set condition on the landlord's right to enter the site, I want the landlord to comply with the Act, and I want to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In this case, it appears the tenant is requested repairs to a manufactured home they purchased, under a warranty. I do not have jurisdiction under the Act as this agreement is between a purchaser and seller. Therefore, I declined to hear any matter related to repairs, this included any monetary loss.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant's request to set aside the Notice to End Tenancy and the tenant's application to recover the filing fee at these proceedings.

Issue(s) to be Decided

Should the tenancy continue?

Background and Evidence

This tenancy commenced on September 1, 2020. Site rent of \$500.00 was payable on the first of each month.

The landlords submit that the tenants gave notice to end their tenancy on December 1, 2020, to end the tenancy on December 31, 2020. The landlords stated they accepted the tenant notice on December 2, 2020. The landlord stated that on December 8, 2020 the tenant then sent them a withdrawal of their notice to end tenancy.

The landlords submit they never agreed to have the tenancy continue and in fact they issued a One Month Notice to End Tenancy due to the issues that had arisen during this tenancy.

The KC submitted that her and her husband are also co-tenants, with their son BC. KC submitted that her and her husband do not live on the site. KC submitted that the landlord had given them a notice to comply with the park rules on November 27, 2020 and to have the issues in the notice rectified by December 1, 2020, which was an unreasonable time frame.

KC submitted that they informed their son BC that it would be best to end the tenancy and move the manufacture home from the park. KC submitted that BC gave the landlord their 30 days notice to end the tenancy, which the vacancy date was December 31, 2020. KC submitted that they later withdrew their notice to end the tenancy; however, the landlord responded by given them their own notice to end the tenancy. KC submits that their son continued to pay rent after they withdrew their notice to end tenancy.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Tenant's notice

- 38** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

Under the Residential Tenancy Policy Guideline 11 C which notes, a landlord or tenant cannot unilaterally withdraw a notice to end tenancy. A notice to end tenancy may be withdrawn prior to its effective date only with the consent of the landlord or tenant to whom it is given. A notice to end tenancy can be waived only with the express or implied consent of the landlord or tenant.

In this case, the tenants admitted they gave the landlord notice to end the tenancy with an effective date of December 31, 2020. The landlord's accepted that notice. While I accept the tenants later withdrew that notice to end tenancy; however, a tenant cannot unilaterally withdraw a notice to end tenancy once given, without the consent of the landlord.

While I accept the tenant continued to pay subsequent rent, I am not satisfied that the tenant's notice to end tenancy was waived by the landlord or that there was an implied consent to continue the tenancy. If there was such consent to have the tenancy continue, it would make no sense for the landlord to be issuing their own notice to end the tenancy.

I find it was unnecessary for the landlord to give such a notice, as the landlord could have simply received an order of possession based on the tenant's failure to vacate the site on the date in the tenant's notice to end tenancy. In addition, the landlord was entitled to accept rent as long as the tenant was still occupying the site and until this dispute was heard.

Based on the above, I find the tenancy legally ended on December 31, 2020, this was the date the tenants gave the landlord in their notice to end tenancy. Therefore, I dismiss the tenant's application to have the tenancy continue.

As the landlord has accepted occupancy rent for February 2021, I find the landlord is entitled to an order of possession effective at **1:00 PM on February 28, 2021**. This

order may be enforced in the Supreme Court and enforced as an order of that court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

At the hearing the landlord was not prepared to extend the effective date past the date of occupancy rent; however, the landlord suggested to the tenant KC to speak to them after the hearing. The tenant BC became belligerent to the landlord and told the landlord to “shut the f... up” and disconnected their telephone connection, which KC was also sharing. I find BC response was inappropriate as the landlord was simply expressing their willingness to work with KC on having the manufactured home removed from the site.

Conclusion

The tenancy has legally ended. The landlord is granted an order of possession.

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

Dated: February 22, 2021

Residential Tenancy Branch