



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

INTERIM DECISION

Dispute Codes CNE

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the "**Act**") for the cancellation of the landlord's One Month Notice to End Tenancy for End of Employment (the "**Notice**") pursuant to section 40.

The hearing was reconvened from A prior hearing on January 8, 2021. I issued an interim decision following that hearing setting up my reasons for adjourning it to today's hearing. A copy of this interim decision and a notice of reconvened hearing was delivered to each of the parties by Residential Tenancy Branch (the "**RTB**") staff.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:19 am in order to enable the tenant to call into this teleconference hearing scheduled for 11:00 am. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

In the interim decision, I ordered that the tenant serve the landlord and the RTB with his documentary evidence by January 29, 2021, and that the landlord serve the tenant and the RTB with her documentary evidence by February 5, 2021.

The landlord testified that she received the tenant's documentary evidence "in January". The tenant never provided any evidence to the RTB, as ordered. The landlord testified that she served the tenant with copies of her documentary evidence on February 1, 2021, when she collected that month's rent from him. The RTB received copies of the landlord's evidence by mail on February 19, 2021.

I find that the parties have each been served with the other's documents in accordance with the Act and the interim decision. Neither party provided copies of their documentary evidence to the RTB in accordance with the interim decision. However, no prejudice to the opposing party arises out of this breach, so I decline to make any orders resulting from such a breach. I also note that even if the tenant had submitted his documentary evidence

as ordered, I would not have considered it at this hearing, due to his non-attendance (as per RTB Rule of Procedure 7.4).

Issues to be Decided

Is the tenant entitled to an order cancelling the Notice?

If not, is the landlord entitled to an order of possession?

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord, not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a tenancy agreement starting October 1, 2017. Monthly rent is \$240.

The landlord testified that she served the tenant with the Notice on October 1, 2020 in person. She entered a copy of the Notice into evidence which lists this date and mode of service on it. The Notice listed an effective date of October 31, 2020.

The Notice indicated that it was issued because:

- 1) The tenant had not done required repairs or damage to the site; and
- 2) The tenant had breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant applied to the RTB to dispute the Notice on October 15, 2020, 14 days after it was served.

The landlord testified that a tenant failed to maintain the manufactured home park site's front yard. She testified that it was a "total mess". Additionally, she testified that the tenancy agreement only permits the tenant to have two vehicles parked on the site. She testified that in 2019 he moved a "big motorhome" on to the site. She testified that not only did this violate the tenancy agreement's limit of two vehicles, but it also violated tenancy agreements rule that "no trucks, commercial vehicles or equipment larger than 3/4 tons will be allowed to be habitually parked on any pad site park property." She testified that the tenant removed the motorhome in 2019, but that, three weeks ago, he parked it on the site again.

The landlord testified that the tenant keeps two dogs on the site, and that they are frequently unsupervised and allowed to roam the park. She testified that this is a breach of the "pet permission agreement" which forms an addendum to the tenancy agreement. It permits the tenant to keep one dog on the site and requires that the dog be "continuously supervised, controlled and cared for".

Analysis

Based on the undisputed testimony of the landlord, I find that she served the Notice to the tenant in person on October 1, 2020. I find that the tenant applied to dispute the Notice on October 15, 2020.

Section 40 of the Act states:

Landlord's notice: cause

(4) 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.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the manufactured home site by that date.

The tenant failed to dispute the Notice within 10 days of being served with it. As such, he is conclusively presumed to have accepted that the tenancy ended on the Notice's effective date.

The effective date listed on the Notice is October 31, 2020. However, such an effective date would not give the tenant the required one month notice (in order for an effective date of October 31, 2020 to be valid, a notice to end tenancy would have to be issued by September 30, 2020, at the latest). However, section 46(2) of the Act automatically corrects an incorrect effective date to the earliest correct effective date (in this case, November 30, 2020).

As such, I find that the tenant is conclusively presumed to have accepted that the tenancy ended on November 30, 2020.

As the tenancy has ended. I do not need to assess the merits of the allegations made by the landlord against the tenant.

I dismiss his application, without leave to reapply.

Section 48(1) of the Act states:

Order of possession for the landlord

48(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if

- (a) the landlord's notice to end tenancy complies with section 45 [*form and content of notice to end tenancy*], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the Notice complies with the form and content requirements set out at section 45 of the Act.

At the hearing, the landlord stated that she seeks in order the order of possession to be effective on May 31, 2021.

Conclusion

Pursuant to section 48 of the Act, I order that the tenant deliver vacant possession of the manufactured home park site to the landlord by May 31, 2021 at 1:00 pm.

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

Dated: April 12, 2021

Residential Tenancy Branch