



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FFL

Introduction

The landlords (hereinafter the “landlord”) filed their Application for Dispute Resolution (the “Application”) on January 26, 2021 seeking an order of possession for the manufactured home site. Additionally, they seek recompense of the Application filing fee. The matter proceeded by way of a hearing pursuant to s. 67(2) of the *Manufactured Home Park Tenancy Act* (the “Act”) on April 23, 2021.

Both parties attended the conference call hearing. I explained the process and provided each party the opportunity to ask questions.

The tenant confirmed that they received the prepared documentary evidence of the landlord. The tenant also prepared documentary evidence in advance and sent to the landlord; however, the landlord did not receive these pieces. The tenant stated they used the landlord’s business address that is a postal box number. The registered mail piece was not picked up by the landlord.

The tenant provided a Canada Post tracking number. The tracking data shows the package was received on April 23, by early afternoon. For these purposes, I find the landlords received the tenant’s prepared evidence.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession pursuant to s. 48 of the *Act*?

Are the landlords entitled to reimbursement of the Application filing fee?

Background and Evidence

I have reviewed all written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord provided a copy of the tenancy agreement in place between the parties. This agreement was in place before the landlord's took ownership in December 2019. The agreement in place as of the time of this hearing is for monthly rent of \$391.34 payable on the first day of each month.

In their written statement, the landlords provide that they had a system for rent payment in place from December 2019. They provided a mailing address PO box number, an email address for e-transfer, and forms for residents to set up pre-authorized debit. The landlords provide that all other tenants have been able to make rent payments on time be any of the means provided to them – only this tenant here has difficulty paying the rent consistently on the first day of each month as specified in the agreement.

The landlords issued a One Month Notice to End Tenancy for Cause (the "One-Month Notice") to the tenant on November 5, 2020. This specified the end-of-tenancy date of December 5, 2020. On the form, the landlords indicated that they served this document by attaching it to the door of the rental unit on November 5, 2020. The reason for issuing the document was the tenant's repeated late payments of rent. The landlords provide the detail that the tenant was late paying rent for September, October, and November 2020.

In their written statement, the landlords provided the details and dates of late payments:

- September 2020 paid on September 2, 2020
- October 2020 paid on October 8, 2020 – after issuance of a 10-Day Notice to end tenancy, the tenant paid rent within the required 5 days as specified on that document
- November 2020 paid on November 24
- December 2020 paid on December 24

The landlords also provide that they had "numerous verbal conversations with [the tenant] regarding late rent." They informed the tenant of rent payment options. The tenant continues a pattern of verbal abuse when the landlord would visit the rental unit

to demand that the rent be paid. The landlords' impression is that the tenant is demanding in-person payments with the provision of a receipt by the landlords – this involves considerable travel by the landlords to make sure the payment happens.

The landlords provided further submissions on the communication at the start of November 2020. The tenant did not dispute the One-Month Notice; however, they did pay rent on November 24. The tenant again placed the task of collecting rent payments on the landlord, where they are “being too lazy to either collect yourself or have your managers collect for you.” This message dated November 12, 2020 seems to indicate the tenant received the One-Month Notice (“you stopped by in person yesterday to drop off a notice”). Further: “If you grow up and decide to put some effort in, you’ll have the rent from me on time every month.”

In their written statement, the tenant presents that they did not receive either the 10-Day Notice for Unpaid Rent issued in October, nor did they receive the One-Month Notice. In the hearing they presented that there was never anything taped to the door of their manufactured home. After this, there was “no hint” from the landlords about a pending end of tenancy, nor any reference to the end-of-tenancy document they had delivered. They only received any notice of a pending end-of-tenancy on December 24, 2020. Further, the tenant posited that the landlords should have ensured service via registered mail, this in a park where there is a history of vandalism and missing mail items.

The landlords also provide detail on the tenant's handling of their own garbage. This is related to the issue of service of the One-Month Notice insofar as a prior notice to end tenancy was located in the tenant's garbage. Upon inspection, the staff at the property found a copy of the 10-Day Notice previously issued by the landlord in the tenant's misplaced garbage. The landlord ties this to the wilful ignorance on the part of the tenant here in that the tenant would dispose of the documents when they found them.

The landlord provided a copy of an email dated November 24 wherein they provide further clarification to the tenant that rent is payable on the first day of each month. They make reference therein to “RTB-33”, and state: “After the dates on the RTB-33 have passed your tenancy will have officially ended and we will have to move your home into a “License to Occupy” or storage state.” The landlord read this message in the hearing and provided it as per my request on the same day. In the hearing, the tenant confirmed they received this message and referred to the same on their own device.

In the hearing, the tenant maintained that they did not have knowledge of the landlord's desire to end the tenancy –there was no discussion or mention of it by the landlord, and the end-of-tenancy notices served by the landlord were not delivered to the tenant. They presented there is a real issue with vandalism in the park, such as missing mail and garbage bin contents being strewn about. They maintain the One-Month Notice should be properly sent via registered mail with this in mind. Also, they presented that they strove to make communication clear and always sought to make communication non-confrontational.

Analysis

I have reviewed all evidence and testimony before me. In accordance with s. 81, I find the landlords served the tenant with the One-Month Notice on November 5, 2020. In this regard, the landlords' provided 'Proof of Service' document carries weight – it is the landlord providing a witness account of that precise transaction.

Comparatively, I afford less weight to the tenant's statement that they did not receive the document, given that other evidence contradicts what they present. For one, in their written statement they presented that they did not receive the 10-Day Notice; however, there is evidence showing that it appeared in the tenant's garbage which was not in the proper place. Conjoining to this is the landlord's request for the tenant to dispose of garbage properly, which the tenant rebuffed in a terse manner. In sum, what was found was the tenant's own garbage, containing a prior end-of-tenancy document – I find it more likely than not that the tenant here disposed of the One-Month Notice in a similar manner. The issue of the misplaced garbage strains the tenant's own credibility on their statement that they had no knowledge of said document.

Secondly, the tenant provided that they had no knowledge or hint of a looming end of tenancy. The landlord in the hearing read a statement from a message directly to the tenant on November 24 that the tenant confirmed receiving. That statement refers to the served document. From this I conclude the tenant had knowledge of the pending end-of-tenancy; therefore, they were served the One-Month Notice.

I find it was the tenant who focused more on trying to set the landlords in place with brusque replies. I find this shows a clear pattern of a lack of responsibility. This is also evidence that leads to my conclusion that the tenant was dismissive of notices and queries from the landlords on missing rent payments. This is more evidence that leads to my finding that the tenant willfully ignored the One-Month Notice. In sum, the

landlords served the One-Month Notice and the tenant is not credible here when they present that they did not receive that document from the landlords.

I accept the landlords' evidence that the tenant failed to pay rent in one of the available means on time as their tenancy agreement specifies. The tenant here did not present sufficient evidence to the contrary.

The *Act* s. 40(4) specifies that a tenant may dispute the One-Month Notice within 10 days after they receive the document. I find the tenant received the document on the date it was served, on November 5, 2020. There is no record the tenant filed an application to dispute within 10 days. Based on this, I find that the tenant is conclusively presumed under s. 40(5) to have accepted that the tenancy ended on December 5, 2020.

The *Act* s. 45 provides:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice, (b) give the address of the manufactured home site,
- (c) state the effective date of the notice,
- (d) . . . state the grounds for ending the tenancy,
 . . . and
- (e) when given by a landlord, be in the approved form.

I find the One-Month Notice bears sufficient detail as to comply with the requirements of s. 45 regarding form and content. The pertinent details of the end of tenancy date and the date of issue are provided. As such, I find the tenant was aware of the reasons for the landlords issuing the One-Month Notice on November 5, 2020.

For these reasons, the tenancy will end. I find the landlords are entitled to an Order of Possession.

Because the landlords were successful in this Application, they are entitled to a reimbursement of the \$100 Application filing fee.

Conclusion

By s. 48 of the *Act*, I grant the landlord an Order of Possession effective two days after its service by the landlord on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to s. 65 of the *Act*, I grant the landlords a Monetary Order for the recovery of the filing fee paid for this application. The landlords are provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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

Dated: April 27, 2021

Residential Tenancy Branch