



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, LRE

Introduction

The tenant sought to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 39 of the *Manufactured Home Park Tenancy Act* (the “Act”). In addition, the tenant sought an order pursuant to section 63 of the Act.

The landlord attended the hearing at 11:00 a.m. on May 11, 2021. The tenant did not attend the hearing, which ended at 11:15 a.m. Regarding the service of evidence, the landlord confirmed that he had sent all of his documentary evidence to the tenant by way of Canada Post registered mail; a receipt and tracking number were provided.

Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the landlord entitled to an order of possession of the manufactured home site?
3. Is the tenant entitled to an order under section 63 of the Act?

Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The landlord testified that the tenancy started sometime in 2013. Monthly pad rent is \$300.00, and it is due on the first day of the month. There is no written tenancy agreement submitted into evidence. The landlord explained that the tenant owns the mobile home which sits upon the manufactured home site.

On February 3, 2021, the landlord served the Notice – a copy of which is in evidence – on the tenant. Copies of service documentary evidence was submitted by the landlord.

The landlord gave evidence about, and confirmed, the information on the Notice, namely: as of February 3, 2021, the tenant was in rent arrears in the amount of \$15,450.00. In support of the reasons for issuing the Notice, he submitted a worksheet itemizing amounts that had and had not been paid. While the landlord remarked that he regretted not taking steps to enforce rent collection earlier (though, he did issue three previous 10 Day Notices), he had hoped that the tenant's life would improve. It has not.

Analysis

Section 20(1) of the Act states that

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 39(1) of the Act states that

A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

And, a notice must comply with section 45 of the Act. (Form and content of the notice.)

Section 39(4) of the Act requires a tenant who has received a notice under section 46(1) to either, within 5 after receiving the notice, (a) pay the overdue rent, or (b) dispute the notice by making an application for dispute resolution.

Section 55(1) of the Act states that

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 manufacture 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.

Where a tenant applies to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, the burden is on the landlord to prove, on a balance of probabilities, that the tenant did not pay rent in accordance with the tenancy agreement and the Act.

In this dispute, the landlord's undisputed evidence persuades me to find that the tenant did not and has not paid rent as required by the tenancy agreement. While there may be no written tenancy agreement in existence, the terms of the tenancy agreement still apply. (In other words, an oral tenancy agreement still has the force of law.) Finally, having reviewed the Notice, I find that it complies with section 45 of the Act.

Taking into consideration all the undisputed oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving that the tenant did not pay rent in accordance with the tenancy agreement and the Act and I therefore uphold the Notice. Thus, the tenant's application is dismissed without leave to reapply.

Pursuant to section 55(1) of the Act I grant the landlord an order of possession of the manufactured home site. The order, which is issued in conjunction with this Decision to the landlord, must be served on the tenant.

Finally, I dismiss the tenant's application for an order under section 63 of the Act.

Conclusion

I dismiss the tenant's application in its entirety, without leave to reapply.

I grant the landlord an order of possession of the manufactured home site, which must be served on the tenant, and which is effective two days (2) from the date of service.

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: May 11, 2021

Residential Tenancy Branch