



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPU, MNRL, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Manufactured Home Park Tenancy Act* (the "Act") made on February 11, 2021. The Landlord applied for an order of possession to enforce a 10-Day Notice for Unpaid Rent or Utilities (the "Notice") issued on January 28, 2021, a monetary order for unpaid utilities, and the return of the filing fee. The matter was set for a conference call.

The Tenant, the Tenant's Advocate (the "Tenant"), and the Landlord, represented by their legal counsel and two persons from their estate (the "Landlord") attended the hearing and were each affirmed to be truthful in their testimony. Both the Tenant and the Landlord were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to an order of possession?
- Is the Landlord entitled to a monetary order for rent?
- Is the Landlord entitled to the return for their filing fee for this application?

Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Tenant testified that this tenancy began on November 1, 2019, when they moved into the rental unit under a verbal agreement between themselves and the Landlord, their brother, for an agreed-upon monthly rent in the amount of \$500.00 that is to be paid by the first day of each month.

The Landlord testified they took over the management of the rental property in late November 2019, when the owner passed away, and that they could not confirm when this tenancy began. The Landlord and the Tenant agreed that this was no signed tenancy agreement for this tenancy.

The Landlord testified that they served the Tenant with a demand letter to pay the hydro utility charges for their rental pad, by Canada Post Registered mail sent on December 23, 2020. The Landlord submitted a copy of the demand letter, and the Canada Post mail tracking number into documentary evidence.

The Landlord and the Tenant agreed that the Tenant responded to this demand letter, advised the Landlord that utility charges are not due under their tenancy agreement, and that they would not be paying the requested amount.

The Landlord testified that all of the other rental pads on the property pay utility charges and that they believe that the Tenant is responsible for paying the requested utility charges in addition to the monthly rent for this tenancy.

The Landlord testified that they served the Tenant with the Notice to End Tenancy by Canada Post registered mail, sent on January 28, 2021, the Notice listed and effective date of February 19, 2021, and an outstanding utility amount of \$1,664.15. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding utilities within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Landlord testified that the Tenant has not paid the outstanding utilities as indicated on the Notice and that they have not moved out of the rental unit as of the date of these proceedings. The Landlord is seeking an order of possession and a monetary order for the outstanding utilities.

The Tenant testified that the verbal tenancy they started with their brother was for a \$500.00 monthly rent that included all utilities. The Tenant testified that they did not dispute the Notice as the requested amount was not due under their tenancy agreement, and there was no need to file to dispute because the requested amount was not due.

The Landlord argued that since the Tenant did not dispute the Notice, they are entitled to an order of possession, whether or not utilities are due under the tenancy agreement or not.

Analysis

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

After listening to the testimony of these parties and reviewing the documentary evidence, I find that the crux of the matter before me is whether or not utility charges are payable by the Tenant under the tenancy agreement.

I accept the testimony of both these parties that there is no written tenancy agreement for this tenancy, and this tenancy started as a verbal agreement between the Tenant and their brother on November 1, 2019.

Throughout these proceedings, the parties, in this case, offered conflicting verbal testimony regarding the requirement of this Tenant to pay for utility bills in addition to their monthly rent payment. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, as it is the Landlord who issued the Notice to end the tenancy and who has applied to enforce that Notice in these proceedings, I find that it is the Landlord who holds the burden to provide sufficient evidence above their verbal testimony, to support their claim.

After a thorough review of all of the documentary evidence before me, I find that there is no evidence to support the Landlord's claim that utility charges are due for this tenancy or that there had been a history of previous utility payment paid by the Tenant during this tenancy.

In the absence of a written agreement that would require this Tenant to pay utility charges or of proof of a previous history of this Tenant making a payment toward utility charges during this tenancy, I find that the Tenant is not responsible for the payment of utility charges during this tenancy.

As for the 10-Day Notice to end tenancy for nonpayment of utilities, I find that the Landlord was not within their rights to issue a notice to end this tenancy for unpaid utilities, as there are no utility charges due for this tenancy. Consequently, I find that the Notice before me is of no force or effect, and this tenancy will continue until ended in accordance with the *Act*.

I acknowledge the Landlord's argument that whether the amount requested was due or not under the tenancy agreement, that pursuant to section 39(5) of the *Act*, as this Tenant did not dispute this Notice, then the Tenant is conclusively presumed to have accepted the notice and the Landlord is entitled to an order of possession.

Section 39 of the *Act* states the following:

Landlord's notice: non-payment of rent

39 (1) *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.*

(2) *A notice under this section must comply with section 45 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(4) *Within 5 days after receiving a notice under this section, the tenant may*

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) If a tenant who has received a notice under this section does not pay the rent or 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 to which the notice relates by that date.

(6) If

(a) a tenancy agreement requires the tenant to pay utility charges to the landlord, and

(b) the utility charges are unpaid more than 30 days after the tenant is given a written demand for payment of them, the landlord may treat the unpaid utility charges as unpaid rent and may give notice under this section

Pursuant to 39(6a) of the *Act*, as this tenancy agreement does not require the Tenant to pay utility charges, the conclusive presumption provision of the *Act* found in section 36(5a) cannot apply in this case.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has not been successful in their application, I find that the Landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the Landlord's application in its entirety.

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: May 17, 2021

Residential Tenancy Branch