



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GRAPPA INVESTMENT CORP and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC-MT, OLC, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenants on April 15, 2021 (the “Application”). The Tenants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated March 25, 2021 (the “Notice”)
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Agent for the Landlord appeared at the hearing with the Witness. The Witness was not involved in the hearing until required. Nobody attended the hearing for the Tenants. I waited 10 minutes at the outset of the hearing for the Tenants to call into the hearing; however, the Tenants did not do so. The hearing proceeded for 30 minutes and the Tenants did not call into the hearing during this time.

The Agent confirmed the Landlord was seeking an Order of Possession based on the Notice.

I explained the hearing process to the Agent. I told the Agent they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent and Witness provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Agent confirmed receipt of the hearing package. The Agent testified that the Landlord did not receive the Tenants’ evidence. The Agent

testified that the Landlord's evidence was served on both Tenants in person on July 15, 2021.

I accept the undisputed testimony of the Agent about service. Pursuant to rules 3.1 and 3.14 of the Rules, the Tenants were required to serve their evidence on the Landlord. Given the Tenants did not do so, I exclude the Tenants' evidence pursuant to rule 3.17 of the Rules as I find it would be unfair to admit evidence that was not served on the Landlord. I accept that the Tenants were served with the Landlord's evidence in accordance with section 81(a) of the *Manufactured Home Park Tenancy Act* (the "Act"). I find the Landlord complied with rule 3.15 of the Rules in relation to the timing of service of their evidence.

I proceeded with the hearing in the absence of the Tenants. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered the Landlord's documentary evidence and all testimony and submissions of the Agent and Witness. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Are the Tenants entitled to an order that the Landlord comply with the Act, regulation and/or the tenancy agreement?
4. Are the Tenants entitled to recover the filing fee?

Background and Evidence

The Agent testified as follows.

There is a written tenancy agreement between the parties. The Agent does not know when the tenancy started. The tenancy is a month-to-month tenancy. Rent is \$629.00 per month due on the first day of each month.

The Notice was served on Tenant N.C. in person March 25, 2021. The signature on the Notice is the signature of the witness to service of the Notice.

The Tenants do not follow the guidelines of the park. The Tenants disturb the quiet enjoyment of other tenants. The Tenants have been sent a letter about their behaviour. The Tenants' behaviour has not improved since being issued the Notice.

The Landlord has received complaints from other tenants about the Tenants including complaints about the use of foul language, banging, loud talking, yelling and their dog barking. Other tenants have also complained about Tenant L.C.'s driving.

The Tenants and tenants of another site have been fighting consistently and the Agent has had to speak to the Tenants on several occasions about their behaviour.

One time, the Tenants accused other tenants of taking their items. Tenant L.C. came to the Agent about this, used foul language and threatened to harm the other tenants if the Agent did not do something about it. The Agent investigated further and it turned out the items belonged to the other tenants and nothing had been taken from the Tenants.

The Tenants' behaviour affects the tenants that live around them. The Agent works four doors down from the Tenants' site and can hear them yelling, screaming and swearing.

The Witness testified as follows. Tenant L.C. uses foul language and swears at the Witness and other tenants. Tenant L.C. once tried to hit the Witness with his scooter. Tenant L.C. is very rude and threatens people. The Witness has observed Tenant L.C. get into confrontations with other tenants. The Witness has observed the Tenants and other tenants yelling at each other, arguing and using foul language.

The Agent sought an Order of Possession effective two days after service on the Tenants.

The Notice was submitted as evidence. The Notice has an effective date of April 30, 2021. The grounds for the Notice are as follows:

1. Tenant has allowed an unreasonable number of occupants in the unit/site/property/park
2. Tenant or a person permitted on the property by the Tenant has
 - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord

- b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- c. Put the landlord's property at significant risk

The Notice indicates it was served on the Tenants in person and there is a signature of a witness on the Notice.

The Landlord submitted letters to the Tenants about their behaviour and written complaints from other tenants.

Analysis

Rule 7.3 of the Rules states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Here, the Tenants did not appear at the hearing and therefore the Application is dismissed without leave to re-apply.

Section 48(1) of the *Act* states:

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.

The Landlord still must prove the validity of the Notice pursuant to rule 6.6 of the Rules.

The Notice was issued pursuant to section 40(1) of the *Act* and the following subsections:

40 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies...

(b) there are an unreasonable number of occupants on the manufactured home site;

(c) the tenant or a person permitted in the manufactured home park by the tenant has

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

The Tenants had 10 days from receipt of the Notice to dispute it pursuant to section 40(4) of the *Act*.

I accept the testimony of the Agent that the Notice was served on Tenant N.C. in person March 25, 2021. I find the method of service is supported by the witness signature on the Notice.

The Tenants state in the Application that they received the Notice March 26, 2021. I prefer the affirmed testimony of the Agent over the written statement of the Tenants in the Application.

The Tenants had until April 06, 2021 to file the dispute of the Notice given that the 10th day to dispute the Notice fell on a Sunday and was followed by a holiday Monday when the RTB office was closed. The Tenants filed the Application April 09, 2021 and did not pay the filing fee until April 15, 2021. Pursuant to rule 2.6 of the Rules, the Application was not complete until the filing fee was paid on April 15, 2021.

Regardless of whether the April 09 or 15, 2021 date is considered, the Tenants filed the dispute of the Notice late.

Section 59 of the *Act* states:

59 (1) The director may extend a time limit established by this Act **only in exceptional circumstances**, other than as provided by section 52 (3) [starting proceedings] or 74 (4) [decision on application for review]. (emphasis added)

Policy Guideline 36 deals with extending time periods and states:

Exceptional Circumstances

The word "exceptional" means that an ordinary reason for a party not having complied with a particular time limit will not allow an arbitrator to extend that time limit. The word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. **Furthermore, as one Court noted, a "reason" without any force of persuasion is merely an excuse. Thus, the party putting forward said "reason" must have some persuasive evidence to support the truthfulness of what is said.**

Some examples of what might not be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- the party was in the hospital at all material times

The evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party's condition prevented their contacting another person to act on their behalf.

The criteria which would be considered by an arbitrator in making a determination as to whether or not there were exceptional circumstances include:

- the party did not wilfully fail to comply with the relevant time limit
- the party had a bona fide intent to comply with the relevant time limit
- reasonable and appropriate steps were taken to comply with the relevant time limit
- the failure to meet the relevant time limit was not caused or contributed to by the conduct of the party
- the party has filed an application which indicates there is merit to the claim
- the party has brought the application as soon as practical under the circumstances

(emphasis added)

In the Application, the Tenants wrote:

Our social worker was away from March 27 – April 6/21 – we needed her help with this.

I do not find the Tenants' written statement in the Application to be sufficient evidence to prove that exceptional circumstances existed such that the deadline for filing the dispute of the Notice should be extended. I therefore decline to extend the deadline for disputing the Notice.

Section 40(5) of the *Act* states:

(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.

I find the Tenants did not dispute the Notice in accordance with section 40(4) of the *Act* because they did not dispute the Notice within 10 days of receiving the Notice and the deadline for disputing the Notice has not been extended. Therefore, section 40(5) of the *Act* applies and the Tenants are conclusively presumed to have accepted that the tenancy ended April 30, 2021, the effective date of the Notice. The Tenants were required pursuant to section 40(5)(b) of the *Act* to vacate the site by April 30, 2021.

Given the above, the Landlord has proven the validity of the Notice because the Tenants are conclusively presumed to have accepted that the tenancy ended April 30, 2021.

I have reviewed the Notice and find it complies in form and content with section 45 of the *Act* as required.

Given the above, the Landlord is entitled to an Order of Possession pursuant to section 48(1) of the *Act*. The Landlord is issued an Order of Possession effective two days after service on the Tenants.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord is issued an Order of Possession effective two days after service on the Tenants. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Supreme 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 Section 9.1(1) of the *Act*.

Dated: August 05, 2021

Residential Tenancy Branch