



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, PSF, LRE

Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant on September 17, 2021, under the *Manufactured Home Park Tenancy Act* (the “Act”) to cancel One Month Notice to End Tenancy for Cause (the “Notice”) issued on July 31, 2021, for an order that the Landlord provide services or facilities required by the tenancy agreement or law, and for an order to suspend or set conditions on the Landlord's right to enter the rental site. The matter was set for a conference call.

The Landlord and the Tenant attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and the Tenant were provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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

- Should the Notice issued on July 31, 2021, be cancelled pursuant to section 40 of the Act?
- If not, is the Landlord entitled to an order of possession pursuant to section 48 of the Act?
- Should the Landlord be ordered to provide services or facilities required by the tenancy agreement or law?
- Should the Landlord's right to enter the rental site be suspended or have set conditions?

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 documentary evidence submitted by the Landlord shows that the Notice to end tenancy was served to the Tenant on July 31, 2021, by personal service. The Landlord submitted a copy of the Notice and a proof of service form into documentary evidence.

The reason for the Notice was checked off as follows:

- *The Tenant or a person permitted on the property by the Tenant has:*
 - *Significantly interfered with or unreasonably disturbed another occupant or the landlord.*
 - *Seriously jeopardized the health or safety or lawful right of another occupant of the landlord.*
 - *Put the Landlord's property at significant risk.*
- *The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.*
- *The Tenant or a person permitted on the property by the Tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.*
- *The Tenant or a person permitted on the property by the Tenant has caused extraordinary damage to the unit/site or property/park.*
- *Tenant has not done required repairs of damage to the unit/site/property/park.*
- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The Notice states the Tenant must move out of the rental site by September 1, 2021. The Notice informed the Tenant of the right to dispute the Notice within ten days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice is not filed within ten days, the Tenant is presumed to accept the Notice and must move out of the rental unit on the date set out on page one of the Notice.

The Tenant testified that they had initially filed their application to dispute the Notice as a joint application with another renter in the park who had also received a Notice to end tenancy, on the advice of their legal counsel. The Tenant testified that they were notified by the Residential Tenancy Branch that they could not file to dispute a notice to end tenancy as a joiner application with another tenant under a separate tenancy agreement. The tenant testified that this caused them to have to refile their application that was then late.

Analysis

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

Section 40 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause, a tenant must, within 10 days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under section 40(5) of the *Act*.

Landlord's notice: cause

40 (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 rental unit by that date.***

I accept the documentary evidence before me that shows the Tenant was personally served the Notice to end the tenancy on July 31, 2021, by the Landlord, and that the Notice listed an effective date of September 1, 2021. Pursuant to section 40(4) of the *Act*, the Tenant had August 10, 2021, to file an application to dispute the Notice with the Residential Tenancy Branch.

I have reviewed the Tenant's application and noted that they filed to dispute the Notice on September 17, 2021, which is outside the statutory time limit to file to dispute and after the effective date of this Notice.

The Tenant has also requested additional time to file to dispute the Notice, pursuant to section 59 of the *Act*. Section 59(3) of the *Act* states that an extension of time may only be granted if the party has filed before the effective date of the notice, stating the following.

Director's orders: changing time limits

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].*

(2) *Despite subsection (1), the director may extend the time limit established by section 39 (4) (a) [landlord's notice: non-payment of rent] for a tenant to pay overdue rent only in one of the following circumstances:*

(a) the extension is agreed to by the landlord;

(b) the tenant has deducted the unpaid amount because the tenant believed that the deduction was allowed for emergency repairs or under an order of the director.

(3) *The director must not extend the time limit to make an application for dispute resolution to dispute a notice to end a tenancy beyond the effective date of the notice*

I have reviewed the Notice to end tenancy and the Tenant's application for these proceedings, and I find that the Tenant filed to dispute this Notice 16 days after the effective date of this Notice. Therefore, pursuant to section 59(3), I am not able to consider the Tenant's request to extend the timeline to file their application as this request was made after the effective date of the Notice. Consequently, I dismiss the Tenant's request to extend the time limit to file.

As the Tenant's failed to file within the statutory time limit, and their request to extend that time limit has also failed, I find that the Tenant is conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice. Therefore, I must dismiss the Tenant's application to dispute the Notice.

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

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 rental unit 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 have reviewed the Notice, and I find that this Notice complies with section 45 of the *Act*. As I have dismissed the Tenant's application to dispute the Notice, I find that the Landlord is entitled to an order of possession, pursuant to section 48 of the *Act*.

Accordingly, I grant the Landlord an order of possession effective not later than 2 days after service of this Order upon the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that the costs of such enforcement are recoverable from the Tenant.

As this tenancy is ending in accordance with the One-Month Notice, I find that there is no need to address the Tenant's additional claims for an order that the Landlord provide services or facilities required by the tenancy agreement or law, and for an order to suspend or set conditions on the Landlord's right to enter the rental site.

Conclusion

The Tenant's application to cancel the Notice, issued July 31, 2021, is dismissed. I find the Notice is valid and complies with the *Act*.

I grant an **Order of Possession** to the Landlord, effective not later than **2 days** after service of this Order upon the Tenant. The Tenant must be served with this Order. 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.

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

Dated: January 31, 2022

Residential Tenancy Branch