



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Winter Blossum Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNRL, MNDL, MNDCL, FFL

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord; their legal counsel. I note that the tenant did attend the hearing, but called into the hearing at 10:07 – the hearing started at 9:30. The tenant submitted that he didn't have the access code number and had to call the Residential Tenancy Branch and was in the phone queue for sometime before an Information Officer was able to answer his call and provide him with the call in instructions.

The landlord's total monetary claim was originally \$102,344.72, however the landlord reduced that claim to the \$35,000.00 maximum allowed to be heard under the *Manufactured Home Park Tenancy Act (Act)*. At the start of the hearing I clarified with the landlord's counsel that of the amount claimed originally, \$59,873.13 were related to legal fees and \$35,971.59 to bailiff charges resulting from a Supreme Court of British Columbia order regarding compliance with a local bylaw infraction.

As these amounts were not incurred as a result of an order by the Residential Tenancy Branch or made under the jurisdiction of the *Act*, I decline jurisdiction on these portions of the landlord's monetary claim. I note the landlord remains at liberty to pursue those claims through a court of competent jurisdiction.

I also note that the landlord's monetary claim is now reduced to \$6,000.00 for fines received by the landlord from the local municipal authority, during the tenancy. I accept jurisdiction on these matters.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause; to a monetary order for bylaw fines; and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 40, 48, 60, and 65 of the *Act*.

Background and Evidence

The landlord submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on June 1, 2011 for a month to month tenancy beginning on June 1, 2011 for a monthly rent of \$500.00 due on the first of each month, and
- A copy of a One Month Notice to End Tenancy for Cause issued on October 21, 2021 with an effective vacancy date of November 30, 2021 citing the tenant is repeatedly late paying rent; the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk; 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; and the breach of a material term of the tenancy agreement that was corrected within a reasonable time after written notice to do so.

The landlord provided confirmation that Notice to End Tenancy was served to the tenant by registered mail on October 22, 2021. The tenant confirmed receipt of the Notice. The tenant confirmed also that he had submitted an Application for Dispute Resolution (file number noted on the coversheet of this decision) that was to be heard on March 4, 2022.

During this hearing I reviewed this file and noted the tenant's Application was seeking orders to have the landlord provide services and facilities required by law or the tenancy agreement and an order to have the landlord comply with the *Act*, regulation or tenancy agreement. I confirmed the tenant's Application did not seek to cancel the One Month Notice to End Tenancy.

In regard to the landlord's monetary claim, the landlord submitted bylaw infraction fine notifications requiring the landlord to pay 12 - \$500.00 fines due to the condition of the manufactured home site that was found to be in contravention of a municipal "good neighbour" bylaw.

The tenant does not dispute the landlord received these fines or that he was responsible for the condition of the property, but he testified that the imposition of the fines was unjust. He submitted that despite his efforts to comply with the requirements to clean up the property the second bylaw enforcement officer was unrealistic in how they approached the file and the fines.

Analysis

Section 40 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant is repeatedly late paying rent;
- b) The tenant or a person permitted in the manufactured home park by the tenant has put the landlord's property at significant risk;
- c) The tenant or a person permitted in the manufactured home park by the tenant has caused extraordinary damage to a manufactured home site or the manufactured home park;
- d) The tenant does not repair damage to the manufactured home site, as required under section 26(3), within a reasonable time;
- e) The tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Section 40(2) states that a notice under this section must end the tenancy effective on a date that is not earlier than one month after the date the notice is received, and the day before the day in the month, that rent is payable under the tenancy agreement.

Section 40(4) allows a tenant to dispute a notice under Section 40 by making an application for dispute resolution within 10 days after the date the tenant **receives** the notice. As such, I find the tenant had until November 5, 2021 to submit an Application for Dispute Resolution seeking to cancel the One Month Notice.

While the tenant did submitted an Application for Dispute Resolution on November 29, 2021 for other matters the tenant did not submit an Application seeking to cancel this Notice to End Tenancy. As such, I find the tenant has failed to file an Application to dispute the Notice to End Tenancy within 10 days after receipt of the Notice, pursuant to Section 40(2). Therefore, I find the tenant is conclusively presumed to have accepted the end of the tenancy and the tenant must vacate the manufactured home site, in accordance with Section 40(4).

As to the landlord's monetary claim for the bylaw fines received, I find, as per his own testimony, that the tenant was responsible for the condition of the property during his tenancy and that condition led the local municipal authourity to issue the 12 fines to the landlord.

While the tenant disputes that the bylaw officer had been unfair in assessing the fines, I have no authourity to make any determinations or rulings on local bylaws and as such, I cannot determine that the fines were issued improperly. If the tenant had had these concerns their recourse was to dispute the fines at the local municipal level. As there is no evidence before me that the fines had been over turned or that the landlord was not required to pay them, I find the tenant is responsible to reimburse the landlord for all fines levied to the date of this hearing, in the amount of \$6,000.00.

Conclusion

I find the landlord is entitled to an order of possession effective **two days after service on the tenant**. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I find the landlord is entitled to monetary compensation pursuant to Section 60 and 65 of the *Act* and grant a monetary order in the amount of **\$6,100.00** comprised of \$6,000.00 fines owed and the \$100.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 *Manufactured Home Park Tenancy Act*.

Dated: March 01, 2022

Residential Tenancy Branch