



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **FFT, CNR, CNC, OLC**

Introduction

This hearing dealt with an application filed by the tenant pursuant the *Manufactured Home Park Tenancy Act* (the “Act”) for:

- Authorization to recover the filing fee from the other party pursuant to section 65;
- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 39;
- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 40; and
- An order for the landlord to comply with the *Act*, regulations or tenancy agreement pursuant to section 55.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:47 a.m. to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord acknowledged service of the tenant’s Notice of Dispute Resolution Hearing package and stated he had no issues with timely service of documents.

Preliminary Issue

At the commencement of the hearing, the landlord advised me that the manufactured home park named as the respondent is not a limited or incorporated company but is a sole proprietorship, with himself being the sole proprietor. The tenant’s Application for

Dispute Resolution was amended to reflect the landlord's proper legal name pursuant to section 64(3)(c) of the *Act*. The names appearing on the cover page of this decision are correctly named.

Background and Evidence

The landlord gave the following undisputed testimony. The tenant did not pay rent for the months of September and October 2021. On October 27, 2021, the landlord's agent, TW personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities. It stated the tenant failed to pay the sum of \$1,363.32 that was due on September 01, 2021, and October 01, 2021.

The landlord testified that the tenant paid the arrears as follows: \$681.66 on October 22, 2021, and two payments of \$662.00 and \$20.00 on November 03, 2021. The method of payment used by the tenant was direct deposit.

On October 27, 2021, the landlord also served the tenant with a 1 Month Notice to End Tenancy for Cause. The reason for ending the tenancy according to the Notice was repeated late payment of rent. A handwritten ledger of payments was provided to the tenant when serving the notice to end tenancy and was uploaded as evidence for this hearing. According to the ledger, the tenant was late in paying rent every month in 2021, up until August. When the notice to end tenancy was served on October 27th, rent had not been paid for the months of September and October. The landlord testified that the ledger was accurate as of October 27, 2021, as all payments were made by direct deposit. The landlord further testified that the tenant's rent is currently up to date and that he has been issuing receipts for "use and occupancy" of the pad site since issuing the two notices to end tenancy.

The landlord testified that the tenant is in the process of selling his manufactured home and purchasing another in the manufactured home park. On the ledger, there is an additional column representing rent being paid on the other pad site. According to the landlord, rent for that site is also late in being paid, however the landlord is not seeking to end the tenancy for the other site in this hearing.

Analysis

Based on the undisputed testimony of the landlord, I am satisfied the tenant was served with both notices to end tenancy on October 27, 2021, pursuant to sections 88 and 90 of the *Act*.

The tenant filed his application to dispute the notices within five days as required under sections 39 and 40 of the *Act*.

If a tenant files an application to dispute a landlord's notice to end tenancy, the onus falls to the landlord to prove the reasons for ending the tenancy pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure.

I am satisfied the tenant paid the arrears in rent as noted on the 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on November 03, 2021, seven (7) days after being served with the landlord's notice to end tenancy for unpaid rent. As such, I find the tenant failed to pay the overdue rent within five (5) days of receiving the notice as required by section 39 of the *Act*. Consequently, I uphold the landlord's notice to end tenancy for unpaid rent.

Likewise, the tenant did not attend this hearing to provide testimony or present evidence to dispute the landlord's 1 Month Notice to End Tenancy for Cause. Based on the undisputed testimony of the landlord and the evidence before me, I find the tenant was late in paying rent for the manufactured home site every month in 2021. This constitutes late payments on more than three (3) occasions, and **I uphold the landlord's notice to end tenancy for cause**. I grant the landlord an Order of Possession pursuant to section 48(1) of the *Act* which states:

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 the landlord's notice to end tenancy complies with section 45 [*form and content of notice to end tenancy*], and the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice. I have reviewed the landlord's 1 Month Notice to End Tenancy for Cause and find it complies with the form and content provision of section 45 of the *Act*.

As the effective date stated on the notice to end tenancy has passed, I issue an Order of Possession effective two (2) days after service upon the tenant.

The tenant's application seeking an order that the landlord comply with the *Act* is dismissed without leave to reapply as this tenancy is ending.

The tenant's filing fee will not be recovered as the tenant's application was not successful.

The landlord testified that the tenant is currently not in arrears of rent. The landlord is not entitled to an order for the payment of unpaid rent as contemplated by section 48(1.1) of the *Act*.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in 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: March 07, 2022

Residential Tenancy Branch