



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **TT: CNC**
 LL: OPC FFL

Introduction

This hearing dealt with two applications pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”). The Tenant made one application for:

- cancellation of a One Month Notice to End Tenancy for Cause dated November 26, 2021 (“1 Month Notice”), pursuant to section 47.

The Landlords made one application for:

- an Order of Possession pursuant to sections 47 and 55; and
- authorization to recover the fling fee from the Tenant pursuant to section 72.

The two Landlords (“SG” and “SM”) and the Tenant attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated he served the Notice of Dispute Resolution Proceeding for his application (“Tenant’s NDRP”) on each of the Landlords by registered mail but he could not recall the date or provide the tracking numbers of the registered mail. SG acknowledged the Landlord’s received the Tenant’s NDRP on or about December 20, 2021. I find the Tenant’s NDRP was served on the Landlords in accordance with section 82 of the Act.

The Tenant stated he served his evidence on the Landlords by regular mail but could not recall the date of mail. SG stated the Landlords received the Tenant’s evidence. I find the Tenant’s evidence was served on the Landlords in accordance with section 81 of the Act.

SG stated the Landlords served the Notice of Dispute Resolution Proceeding for their application ("Landlords' NDRP") on the Tenant by registered mail. SG submitted the registered mail stub for service of the Landlords' NDRP on the Tenant. I find the Landlords' NDRP was served on the Tenant in accordance with section 82 of the Act.

SG stated the Landlords served their evidence on the Tenant in-person on March 1, 2022. The Tenant acknowledged receipt of the Landlords' evidence. I find the Landlords' evidence was served on the Tenant in accordance with section 81 of the Act.

Preliminary Matter – Removal of a Party to the Tenant's and Landlords' Applications

At the outset of the hearing the Tenant stated that, although one of the parties ("GN") named in the Tenant's application as an applicant and in the Landlords' application as a respondent was an occupant of the rental unit, GN was not a party to the tenancy agreement and she had never agreed to become a party to the tenancy agreement. The Landlords confirmed GN was not a party to the tenancy agreement. The Tenant requested that the Tenant's application and the Landlord's application be amended to remove GN as a party in the two applications.

Rule 4.2 of the *Residential Tenancy Branch Rules of Procedure* states ("RoP"):

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

As the Tenant's request could reasonably be anticipated by the Landlords, I amended the Tenant's application to remove GN as an applicant and to remove GN as a respondent in the Landlords' application.

Preliminary Matter – Correction of Name of Party to Application

I noted that the name stated as the administrator on the Grant of Probate for the Tenant's mother that was submitted into evidence by the Tenant was different from the

name used in the Tenant's application and the Landlord's application. The Tenant stated the name stated on the Grant of Probate was his legal name and that the name used in his application was an error. The Tenant requested an amendment to his application to change the name provided to legal name. SG requested an amendment to the Landlords application to replace the name provided as the Tenant in their application with the legal name of the Tenant.

With the consent of the Tenant and Landlords, pursuant to Rule. 4.2, I amended the Tenant's application and the Landlords' application to replace the name provided by the Tenant and Landlord in their respective applications with the legal name of the Tenant.

Issue(s) to be Decided

- Is the Tenant entitled to cancellation of the 1 Month Notice?
- If the Tenant is not entitled to cancellation of the 1 Month Notice, is the Landlord entitled to an Order of Possession to section 48(1) of the Act?
- Is the Landlord entitled to recover the filing fee of their application from the Tenant?

Background and Evidence

While I have turned my mind to all 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 principal aspects of the Tenant's application and my findings are set out below.

SG stated there is no written agreement for the tenancy. The parties agreed the tenancy for the home site ("Home Site") located in the Landlord's manufactured home Park ("Park") commenced on July 9, 2016, when the Tenant's mother purchased the manufactured home ("Home") from the previous owner and lessee of the Home Site in 2016. SG stated the rent for the Home Site is currently \$450.00 payable on the 1st of day of each month. SG stated the Tenant has paid the rent for the Home Site for the month of March 2022.

SG stated the Landlords served the 1 Month Notice on the Tenant's door on November 26, 2021. SG submitted a signed Proof of Service on RTB Form-34 to corroborate her testimony of service of the 1 Month Notice on the Tenant. I find the 1 Month Notice was served by the Landlords on the Tenant in accordance with section 81 of the Act.

The 1 Month Notice stated the cause for ending the tenancy was:

1. the Tenant was repeatedly late paying the rent
2. the Tenant or a person permitted on the property by the Tenant has put the landlord's property at significant risk; and
3. the Tenant has assigned or sublet the site without the landlord's written consent.

The 1 Month Notice provided the following details for ending the tenancy:

The people on the property have assigned the unit to themselves without the written consent of the landlord. They are not the registered owners of the trailer. They have not signed the rental agreement supplied to them. They have not paid the rent amount discussed as they were moving in. The small amount of rent that they decide to pay, is repeatedly late. August, September and October payments were all 7-15 days late, without any communication.

We have requested proof of woodstove certification, silverstar certification, and insurance coverage, without any response. We expect the wood stove is not certified and that they do not have insurance coverage, which puts the health of the other tenants, their belongings and the property at significant risk. The Salmon River Estuary is also right across the street within 150 feet of the property, which is a significant risk of liability.

Written evidence to support the above statements, and the move in date, is available immediately upon request. Audit evidence to support the move in date can be available through an official request process.

SG testified the Tenants were late paying the rent on August, September and October 2022. SG submitted copies of the late payments to corroborate her testimony. The SG stated the Tenant had not sought the Landlord's consent to the assignment of the tenancy agreement from the Tenant's mother to the Tenant. The Landlord stated that the Tenant had failed to obtain the required certifications for the wood stove and had not provided evidence that manufactured home was insured.

The Tenant stated he was the administrator of his mother's estate and submitted a copy of the Grant of Probate dated January 18, 2019 ("Grant of Probate") from the BC Supreme Court to corroborate his statement. The Tenant admitted the Home was still registered in his mother's name. The Tenant stated he is the beneficiary of the Home and that he would be transferring the Home into his own name in the near future. The

Tenant acknowledged that he was late paying the rent for August, September and October 2021.

Analysis

If a tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

Section 40 of the Act states:

- 40 (1)** A landlord may 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 the rent;
 - (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;
 - (d) the tenant or a person permitted in the manufactured home park by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the manufactured home park, or
 - (iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

- (e) 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;
 - (f) the tenant does not repair damage to the manufactured home site, as required under section 26 (3) *[obligations to repair and maintain]*, within a reasonable time;
 - (g) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
 - (h) the tenant purports to assign the tenancy agreement or sublet the manufactured home site without first obtaining the landlord's written consent or an order of the director as required by section 28 *[assignment and subletting]*;
 - (i) the tenant knowingly gives false information about the manufactured home park to a prospective tenant or purchaser viewing the manufactured home park;
 - (j) the manufactured home site must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;
 - (k) the tenant has not complied with an order of the director within 30 days of the later of the following dates:
 - (i) the date the tenant receives the order;
 - (ii) the date specified in the order for the tenant to comply with the order.
- (2) A notice under this section must end the tenancy effective on a date that is
- (a) not earlier than one month after the date the notice is received, and
 - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

- (3) A notice under this section must comply with section 45 *[form and content of notice to end tenancy]*.
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (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.

The Landlord served the Tenant with the 1 Month Notice on the Tenant's door on November 26, 2021. Pursuant to section 83 of the Act, the Tenant was deemed to have received the 1 Month Notice on November 29, 2021. Pursuant to section 40(4), the Tenant had until December 8, 2021, to make an application for dispute resolution to dispute the 1 Month Notice.

The records of the Residential Tenancy Branch ("RTB") disclose the Landlords made their application for dispute resolution on November 26, 2021. As the Landlords made their application before the expiry of the 10-day dispute period, I dismiss the Landlord's application. As the Landlords' application has been dismissed, they are not entitled to recover their filing fee from the Tenant.

The records of the Residential Tenancy Branch ("RTB") disclose the Tenant made his application on December 9, 2021. Based on the foregoing, the Tenant made his application after the 10-day dispute period permitted by section 40(4) of the Act. Pursuant to section 40(5) of the Act, the Tenant is conclusively deemed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the Home Site by that date, being February 1, 2022. The Tenant did not vacate the Home Site on February 1, 2022. Pursuant to section 61(2)(a), I find the tenancy ended on March 17, 2022, being the date of this hearing.

Although I have found that the tenancy has ended pursuant to section 40(5) of the Act, I will nevertheless consider whether the Landlord had cause to end the tenancy pursuant to the 1 Month Notice.

The Landlord stated the Tenant had not obtained the consent of the Landlord to the assignment of the tenancy agreement from his deceased mother to himself and was therefore in contravention of section 40(1)(h) of the Act. The Tenant's mother was the tenant pursuant to the terms of the tenancy agreement. Section 1 of the Act defines a tenant as:

"tenant" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

The Tenant has provided a copy of the Grant of Probate which discloses that he is the administrator of the estate of his mother. As such, the Tenant is now the tenant for the purposes of the tenancy agreement as he is the representative of estate of the deceased tenant. Accordingly, there is no cause for ending the tenancy pursuant to section 40(1)(h) of the Act.

The Landlord submitted evidence that the Tenant had been late paying the rent on August, September and October 2021. The Tenant admitted that he had been late paying the rent on those occasions. *Residential Tenancy Policy Guideline 38* (PG 38) provides guidance on when a tenancy has been repeatedly late paying the rent. PG 38 states in part:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late

Based on the above, I find that, pursuant to section 40(1)(a) of the Act, the Tenant has been repeatedly late paying the rent. I find the Landlord had cause to issue the 1 Month Notice.

Section 48(2), 48(3) and 48(4) of the Act states:

- 48(2) A landlord may request an order of possession of a manufactured home site in any of the following circumstances by making an application for dispute resolution:
- (a) a notice to end the tenancy has been given by the tenant;
 - (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
 - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 89 (2) (a.1), requires the tenant to vacate the manufactured home site at the end of the term;
 - (c.1) the tenancy agreement is a sublease agreement;
 - (d) the landlord and tenant have agreed in writing that the tenancy is ended.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a manufactured home site, and the order takes effect on the date specified in the order.
- (4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 6 *[Resolving Disputes]*,
- (a) grant an order of possession to the landlord, and
 - (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

The Tenant was served with the 1 Month Notice and he did not Make an application for dispute resolution to dispute the 1 Month Notice until after the time for making that application has expired on December 8, 2021. I have reviewed the 1 Month Notice and find it complies with the form and content requirements of section 45 of the Act. The Tenant has paid the rent for March 2022. Based on the foregoing, pursuant to section 48(4), I order the Tenant to provide the Landlords with vacant possession of the Home Site effective at 1:00 pm March 31, 2022, after service of the order on the Tenant.

Conclusion

The Landlords are provided with an Order of Possession effective on March 31, 2022. This Order must be served by the Landlords on the Tenant as soon as possible upon receipt from the Residential Tenancy Branch. Should the Tenant or anyone on the manufactured home site 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: March 21, 2022

Residential Tenancy Branch