



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Tenant: CNC, OLC, FFT
For the Landlord: OPC, FFL

Introduction

The Tenant filed an Application for Dispute Resolution on January 5, 2022 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). They also seek the Landlord’s compliance with the legislation and/or the tenancy agreement, and reimbursement of the Application filing fee.

The Landlord filed their own Application on February 14, 2022 seeking an order of possession, monetary compensation, and reimbursement of the Application filing fee. With the Tenant’s Application already in place, the Residential Tenancy Branch joined these two applications concerning the same tenancy.

The matter proceeded by way of a hearing pursuant to s. 67(2) of the *Manufactured Home Park Tenancy Act* (the “Act”) on April 5, 2022. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing. Both parties confirmed they received the prepared evidence of the other. On this basis, the hearing proceeded.

Preliminary Matter – Landlord’s request for monetary compensation

The Landlord entered their request for reimbursement of the Application filing fee on their Application of February 14, 2022. They also made a claim for compensation, indicating the same \$100 amount for the filing fee. I find the Landlord repeated the same piece on their Application; however, they are not entitled to double the amount of the Application filing fee.

Although I did not verify this in the hearing, I dismiss the Landlord's monetary claim here, finding there was no need for a separate monetary claim, made in error. My finding here does not preclude the Landlord from making another monetary claim in a separate Application.

Preliminary Matter – Tenant's request for the Landlord's compliance with the *Act*/tenancy agreement

The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes 'related issues', and Rule 6.2 provides that the Arbitrator may refuse to consider unrelated issues. It states: ". . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply."

As I stated to the parties in the hearing, the matter of urgency here is the possible end of this tenancy. I find the most important issue to determine is whether or not the tenancy is ending, based on One-Month Notice issued by the Landlord.

I dismiss the Tenant's request for the Landlord's compliance with the legislation and/or tenancy agreement, based on the pretext of the Landlord's entry to the manufactured home site. On this issue, the Tenant has leave to re-apply if they wish.

Issues to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in their Application, is the Landlord entitled to an Order of Possession, pursuant to s. 48 of the *Act*?

Is the Tenant entitled to recover the filing fee for this Application, pursuant to s. 65 of the *Act*?

Is the Landlord entitled to recover the filing fee for their Application, pursuant to s. 65 of the *Act*?

Background and Evidence

The parties agreed on the basic terms of the tenancy agreement signed in 2009 after this Landlord acquired the property. The agreement submitted by the Landlord also contains bylaws for the manufactured home park. Broad terms cover maintenance of the site, general conduct, and the impact of violations of the rules. A violation is “considered a breach of a material term of the Tenancy Agreement, and may result in a Notice to End Tenancy or other penalty . . .”

The matter here concerns the One-Month Notice that the Landlord attached to the door of the Tenant’s manufactured home on December 31, 2021. The Landlord provided a photo of this. The Tenant acknowledged they received the One-Month Notice in this manner.

The Landlord indicated the following reasons for ending the tenancy on page 2 of the One-Month Notice:

- 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 reasonably time after written notice to do so.

The Landlord provided the following details on the One-Month Notice:

- written notice to the Tenant on May 18, 2021 gave notice of required repairs to be completed within a reasonable time frame
- the Landlord granted a time extension at the Tenant’s request – to December 31, 2021
- the Tenant failed to make the requested repairs, thus violating s. J(1) of the agreement and the bylaws

The Landlord included copies of their email communication, dated May 18, 2021, with the Tenant that sets out 6 points of necessary repairs or clean-up. This included vehicles that must be removed, a boat/trailer to be removed, 2 sheds needing painting and siding, an “ATV structure” must be removed, and other material on the site must be cleaned up. Most relevant to the Landlord’s reason for ending the tenancy is their request that “Your home must be painted and the siding repaired within 30 days of this email.” The Landlord gave short-term timelines for clean-up; however, they gave a 30-day timeline for the matter of painting and siding to the Tenant’s manufactured home.

By June 27, the Tenant replied to state they were working remotely, and would be starting construction on the home with new windows on the following weekend. The Tenant provided the final completion date of December 31, 2021. The Landlord responded and agreed to this final end-date for windows and siding.

By December 10, the park manager messaged to the Tenant to inquire on the status. On this same date, the Landlord messaged to the Tenant stating, "If the work is not completed by that agreed date a 30 day notice to end tenancy will be issued on January 1, 2022."

The Tenant responded on December 16 to state they completed all other portions of the Landlord's item requiring completion, except for the siding on the manufactured home. They stated they did not have money to hire anyone to add the siding. Additionally, "with the weather getting colder it is not recommended to [do] siding in these temperatures". The Tenant asked for another extension on the completion date "until spring."

In their evidence the Landlord referred to photos they provided, showing the state of the manufactured home as of December 10, 2021. These photos run counter to the Landlord's specification that the manufactured home must be completed, with siding repaired or replaced. The photos show the exterior of the manufactured home consisting of plywood and insulation material.

The Landlord explained the evidence in chronological fashion in the hearing. In response to this, the Tenant admitted the site needed cleaning. In their estimation they were preparing to go "above and beyond" with the replacement of siding, and this started with the windows on the manufactured home, which they replaced at their own expense. They have the siding materials purchased, yet could not proceed with installation due to the cost. They cited the temperature guidelines for proper installation, with winter only starting to recede in the area as of the date of the hearing. They also cited their own work situation where they were away working remotely for extended periods of time.

The Tenant provided they were just starting the job involving siding, stating "It's a priority to myself." Their plan was to complete this task during spring break, an allotted period of time when their work was in abeyance. The Tenant proposed a May 15, 2022 end date when they were asked to commit to a firm date for completion.

The Landlord agreed the Tenant made improvements with the windows on the manufactured home. They also agreed the Tenant completed all other work the Landlord stated was necessary for completion of clean-up to the site. They reiterated their concern with the Tenant's commitment to timelines. The Landlord was not amenable to a May 15 completion date.

The parties agreed on a May 4, 2022 target date for completion. This includes the siding and skirting.

Analysis

The *Act* s. 40(1)(f) allows a landlord to end a tenancy because the tenant did not repair damage to the manufactured home site, as required under s. 26(3).

Following this s. 40(1)(g) allows an end of tenancy due to a tenant's failure to comply with a material term, not correcting the situation within a reasonable time after given written notice to do so.

In the matter before me, the Landlord has the onus to prove that the reason for ending the tenancy is valid and sufficient.

The *Act* s. 40(4) specifies that a tenant may dispute the One-Month Notice within 10 days after they receive the document. I find the tenant received the document on the date it was served, on December 31, 2021, then making their Application on January 5, 2022, within the required time limit set out in the *Act*.

I find the Landlord presented sufficient reasons for ending the tenancy. I find the reasons for issuing the One-Month Notice are valid, and the tenancy should end for this reason. Additionally, the One-Month Notice meets the requirements for form and content necessary for it to be effective. Through the hearing process, I find the Tenant was aware of the reasons for the Landlord issuing the One-Month Notice on December 31, 2021.

I grant the Landlord a two-day effective Order of Possession in this scenario. The Tenant is aware of the final end-date for their completion of proper siding to be installed on the manufactured home, including skirting. I grant the Landlord the Order of Possession as a measure of surety, to ensure their legal right to end the tenancy is enforceable should the Tenant not complete the job as required. The Order of Possession specifies a two-day effective date, giving the Landlord discretion on when they serve it to the Tenant in relation to the timeline that both parties discussed in the hearing. To be clear: this is a 2-day Order of Possession, for work to be completed by the Tenant by May 4, 2022.

Because the Landlord was successful in this Application, they are entitled to a reimbursement of the \$100 Application filing fee. The Tenant was not successful in their Application for a cancellation of the One-Month Notice; therefore, they are not entitled to the filing fee.

Conclusion

The Tenant's Application to cancel the One-Month Notice is dismissed without leave to reapply.

By s. 48 of the *Act*, I grant the Landlord an Order of Possession **effective two days after its service by the Landlord on the Tenant**. Should the Tenant fail to comply with this Order, the Landlord may file the Order of Possession with the Supreme Court of British Columbia, where it will be enforced as an order of that court.

Pursuant to s. 65 of the *Act*, I grant the Landlord a Monetary Order for the recovery of the filing fee paid for this Application. I provide the Landlord with this Order in the above terms and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 s. 9.1(1) of the *Act*.

Dated: April 8, 2022

Residential Tenancy Branch