



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, LRE, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Manufactured Home Park Tenancy Act* ("Act"), for an Order to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated March 7, 2022 ("10 Day Notice"); for an Order for the Landlord to Comply with the Act or tenancy agreement; to suspend or restrict the Landlord's right to enter; and to recover the \$100.00 cost of their Application filing fee.

The Tenant, his lawyer, P.V. ("Counsel"), and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. The Landlord said he had received the Application and the documentary evidence from the Tenant and had reviewed it prior to the hearing. The Landlord confirmed that he had not submitted any evidence to the RTB or to the Tenant.

Preliminary and Procedural Matters

The Tenant provided Counsel's email address in the Application, and the Landlord requested that the Decision be mailed to him; the Landlord provided his mailing address in the hearing. Also, the Parties confirmed their understanding that the Decision would be emailed to Counsel, mailed to the Landlord, and that any Orders would be sent to the appropriate Party in this manner.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised the Parties that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the Application, the most urgent of which is the request to set aside the 10 Day Notice. I told the Parties that not all the claims on the Application are sufficiently related to be determined during this proceeding. I said I would, therefore, only consider the Tenant's request to set aside the 10 Day Notice and the recovery of the filing fee at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

Issue(s) to be Decided

- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?
- Is the Tenant entitled to recovery of his \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that the tenancy began in the fall of 2018, with a monthly rent of \$300.00, due on the first day of each month. The Parties agreed that the Tenant did not pay the Landlord a security deposit, nor a pet damage deposit. The Parties agreed that the Tenant is renting space on the Landlord's property, which is not a manufactured home park, but private property. However, other arbitrators have analyzed this question and concluded that the *Manufactured Home Park Tenancy Act* applies in this case; given their analyses, I am disinclined to disagree, without evidence or authority to support any argument to the contrary.

The Tenant submitted a copy of the 10 Day Notice, which was signed and dated March 7, 2022, and which has the rental unit address. The 10 Day Notice was served by posting it on the rental unit door on March 7, 2022, with an effective vacancy date of March 13, 2022, which is automatically corrected by the Act to March 20, 2022. It was served on the grounds that the Tenant failed to pay the Landlord \$3,000.00 when it was due on March 1, 2022.

In the hearing, I asked the Landlord in which months the Tenant failed to pay how much

rent, resulting in the total of \$3,000.00. The Landlord replied:

He hasn't paid me the monies he owes me. I didn't take his cheques, because I filed an end of tenancy. My lawyer served him with a One Month Notice, and that's why we're sitting here today. There was no money paid. He has caused lots of damage on my property. There is money he is supposed to pay me. I didn't cash his cheques, because I never picked them up.

The lawyer said not to pick them up. Now [the lawyer's] dead and there's where it's at. I didn't cash any of those cheques. Pay me the money.

In June of last year, I stopped taking the payments, and he just stayed. I never cashed those cheques. I shouldn't be out that money. Where does the Landlord have rights? I just get abuse when I go up there.

Counsel replied:

We've heard from [the Landlord] who is uncertain as to what [the Tenant] owes. That uncertainty would make this 10 Day Notice fail on those grounds alone.

I'd like to draw your attention to page 23 in our submissions – the decision with the last four numbers being [XXXX]. The arbitrator concluded that the Landlord owed to the Tenant \$2,650.00. It's [the Landlord] owing [the Tenant]. You can't issue a 10 Day Notice for something you owe to the Tenant.

He refused to accept the rent cheques – that was decided in – he was deemed to have waived his right to collect rent.

The Landlord said: "I have been cashing your cheques."

Counsel said:

It's the Landlord s' burden to prove. He provided no evidence of how much [the Tenant] owes for any rental period. He's made an assertion that flies in the face of logic, because he hasn't cashed the rent cheques,

See file number [YYYY] on page 12 of our submissions, wherein the arbitrator found that the rent amount was \$300.00 a month. There was an order to pay the Tenant \$2,400.00, which was allowed to be paid in reduction of rent, so that's

what happened. The assertion that money owing dates back to the period covered - not have to pay [the Landlord]. [The Landlord] has tried to use [the Tenant's] compliance with the order to evict him.

The Tenant said:

This is causing me much stress and hardship. There has been a subsequent eviction notice that was part of this evidence package, too, that doesn't have any move-out date. He showed up with another one, and he's tampering with my mail and calling the RCMP on me.

Counsel said:

There's been some history between the Parties and some anxiety and stress. The [10 Day Notice] doesn't comply with the Act in any sense of the word. Mr. B has failed to prove that [the Tenant] owes him any amounts of money. There are no dates of when it is due, when it was last received. That's the submissions of the Tenant.

The Parties made further comments about the Tenant's mail and a Small Claims case between them, although these are not issues before me, therefore, I will not comment on them further.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

When a tenant applies to cancel an eviction notice, section 47 of the Act requires me to consider whether the landlord is entitled to an order of possession. I must grant the landlord an Order of Possession if – first - I dismiss the tenant's application, and second, if the eviction notice is compliant with the Act, as to form and content.

The onus to prove their case is usually on the person who applies for dispute resolution. However, a landlord must prove the reason they wish to end the tenancy when their tenant applies to cancel an eviction notice. As such, the burden of proof is on the Landlord for this proceeding.

Section 20 of the Act states: "A tenant must pay rent when it is due under the tenancy

agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly rent due to the Landlord.

Section 39 of the Act states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 39 also states that the 10 Day Notice must comply with section 45, as to form and content.

The Landlord acknowledged that the Tenant had sent him rent cheques via registered mail, but the Landlord decided not to pick up these mailings on his lawyer’s advice,.

According to RTB Policy Guideline #12, “Service Provisions”, it states:

Where a document is served by Registered Mail or Express Post, with signature option, the refusal of the party to accept or pick up the item, does not override the deeming provision. Where the Registered Mail or Express Post, with signature option, is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.

Accordingly, I find that the Landlord’s failure to pick up the Tenant’s registered mailed rent cheques does not equate to the Tenant not having paid rent. Rather, it evidences the Landlord’s failure to accept the rent from the Tenant who is trying to pay on time. I find this is not grounds for issuing a 10 Day Notice under the Act. Further, the Landlord said he has started cashing the Tenant’s cheques, so it is not clear how the Tenant is not paying rent.

Based on the evidence before me overall on this matter, I find the Landlord has provided insufficient evidence to uphold the validity of the 10 Day Notice. Therefore, I find the Tenant is successful in his Application for an Order to cancel the 10 Day Notice. Pursuant to sections 39 and 55 of the Act, I cancel this 10 Day Notice and find the tenancy continues until ended in accordance with the Act.

Given his success in this regard, I also award the Tenant with recovery of his **\$100.00** Application filing fee from the Landlord, pursuant to section 65 of the Act. **I authorize the Tenant to deduct \$100.00** from one upcoming rental payment in complete satisfaction of this award, pursuant to section 60 of the Act.

I encourage the Landlord to contact the RTB for guidance on dealing with tenancy matters that arise from now on. An information officer can assist the Landlord by explaining the steps needed to accomplish tenancy goals that may arise. For instance, when trying to evict a tenant, a landlord may give the tenant receipts labelling such payments as “for use and occupancy only”.

Conclusion

The Tenant is successful in his Application to cancel the 10 Day Notice, as the Landlord provided insufficient evidence to fulfil his burden of proof on a balance of probabilities in this matter.

The Tenant is also awarded recovery of his **\$100.00** Application filing fee from the Landlord. The Tenant is authorized to deduct \$100.00 from one upcoming rent payment in complete satisfaction of this award.

The Tenant’s other claims are dismissed with leave to reapply.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 13, 2022

Residential Tenancy Branch