



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC-MT, RP, LRE, OLC

Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- more time to cancel a Notice to End Tenancy, pursuant to section 59;
- cancellation of the One Month Notice to End Tenancy for Cause, pursuant to section 40;
- an Order that the landlord's right to enter be suspended or restricted, pursuant to section 63;
- an Order directing the landlord to comply with the *Act*, regulation or tenancy agreement, pursuant to section 55; and
- an Order for regular repairs, pursuant to section 26.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord was represented by counsel.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they are not recording this dispute resolution hearing.

Both parties confirmed their email address for service of this decision.

Preliminary Issue- Service

Both parties agree that the tenant did not serve the landlord with a copy of this application for dispute resolution or the tenant's evidence.

The tenant testified that she did not receive the Notice of Dispute Resolution Proceedings from the Residential Tenancy Branch. The Residential Tenancy Branch Dispute Management System (DMS) states that the Notice of Dispute Resolution Proceedings was e-mailed to the tenant, at the email address provided by the tenant in the tenant's application for dispute resolution, on May 18, 2022. Based on DMS, I find that the Notice of Dispute Resolution Proceedings was made available to the tenant via email on May 18, 2022.

Rule 3.1 of the Residential Tenancy Branch Rules of Procedure (the "Rules") states:

The applicant must, within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch, serve each respondent with copies of all of the following:

- a) the Notice of Dispute Resolution Proceeding provided to the applicant by the Residential Tenancy Branch, which includes the Application for Dispute Resolution;
- b) the Respondent Instructions for Dispute Resolution;
- c) the dispute resolution process fact sheet (RTB-114) or direct request process fact sheet (RTB-130) provided by the Residential Tenancy Branch; and
- d) any other evidence submitted to the Residential Tenancy Branch directly or through a Service BC Office with the Application for Dispute Resolution, in accordance with Rule 2.5 [Documents that must be submitted with an Application for Dispute Resolution].

Based on the testimony of both parties I find that the tenant did not serve the landlord with the Notice of Dispute Resolution Proceeding within three days of the Notice of Dispute Resolution Proceeding Package being made available by the Residential Tenancy Branch. The tenant's application for dispute resolution is therefore dismissed

with leave to reapply and the tenant's evidence is excluded from consideration, for failure to serve.

I notified the tenant that if she wished to pursue this matter further, she would have to file a new application.

Section 48(1) of the *Act* states:

- 48** (1) 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
- (a) the landlord's notice to end tenancy complies with section 45 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Even though the tenant's application was dismissed, pursuant to section 48(1) of the *Act*, I find that I must determine if the landlord is entitled to an Order of Possession for cause.

Counsel submitted that the landlord's evidence was served on the tenant on September 5, 2022 via posting on the tenant's door. The tenant testified that she received the above documents on September 7, 2022 and has had an opportunity to review them. I find that the landlord's evidence was served on the tenant in accordance with section 88 of the *Act*. While the evidence was not received by the tenant 7 clear days before the hearing, I find that the tenant is not prejudiced by their inclusion because the tenant testified that she had time to review the landlord's evidence in advance of this hearing. In the hearing the tenant did not raise any objections pertaining to the timing of the service of the landlord's evidence. The landlord's evidence is accepted for consideration.

Counsel submitted that additional digital evidence was served on the tenant via email on September 5, 2022. The tenant testified that she received the digital evidence via email on or around September 8, 2022. The tenant testified that she had an opportunity to review the digital evidence in advance of this hearing. While the above evidence was not received by the tenant 7 clear days before the hearing, I find that the tenant is not prejudiced by their inclusion because the tenant testified that she had time to review the landlord's evidence in advance of this hearing. In the hearing the tenant did not raise

any objections pertaining to the timing of the service of the landlord's evidence. The landlord's evidence is accepted for consideration.

Later in the hearing the tenant testified that she did not receive the landlord's affidavit that was presented in the hearing by counsel. The tenant testified that she received exhibits A, B and F that were attached to the affidavit. I note that exhibit F is the One Month Notice to End Tenancy for Cause dated March 31, 2022 (the "Notice"), which is the subject of this hearing. The landlord testified that the affidavit was included in the evidence package posted to the tenant's door on September 5, 2022. The landlord testified that the information contained in the affidavit and presented in the hearing by counsel is true and accurate.

I found the landlord's testimony to bear an air of reality and to be straightforward and honest. I find, on a balance of probabilities, that the landlord would not have served the tenant with only some of the exhibits attached to the affidavit and not the affidavit itself, all of which were assembled by counsel. I find the tenant's testimony less credible than the landlord's regarding service of documents. I accept the landlord's affidavit and all exhibits for consideration.

Preliminary Issue- Amendment

Both parties agree that the tenant accidentally named herself as both the landlord and the tenant in this application for dispute resolution. In the hearing the tenant provided her full legal name. Both parties agreed on the correctly named landlord. Pursuant to section 57(3)(c) of the *Act*, I amend the tenant's application to correctly name the landlord and to state the tenant's full legal name.

Issue to be Decided

Is the landlord entitled to an Order of Possession, pursuant to the One Month Notice to End Tenancy for Cause?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began in 2016 and the tenant is still residing on the subject rental pad. Monthly rent in the amount of \$450.00 is payable on the first day of each month.

The landlord testified that the Notice was posted on the tenant's door on March 31, 2022. The tenant testified that she received the Notice on March 31, 2022. The Notice was entered into evidence and states that the tenant must vacate the subject rental pad by May 31, 2022.

The Notice states the following reasons for ending the tenancy:

- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- Breach of material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;

The Notice is signed and dated by the landlord, gives the address of the subject rental property, states the ground for ending the tenancy, and is in the approved form, RTB Form 32.

The tenant filed to dispute the Notice on May 9, 2022, 30 days after the tenant received the Notice.

The tenant testified that she filed to dispute the Notice before May 9, 2022 but did not submit the necessary fee waiver documents in the required time period and her application was rejected.

Analysis

Based on the testimony of the landlord, I find that the Notice was served on the tenant via posting on March 31, 2022, in accordance with section 88 of the *Act*. Based on the testimony of the tenant, I find that the tenant received the Notice on March 31, 2022.

Upon review of the Notice I find that it meets the form and content requirements of section 45 of the *Act* because it:

- is signed and dated by the landlord,
- gives the address of the subject rental property,
- states the ground for ending the tenancy, and
- is in the approved form, RTB Form #32.

Section 40(4) and section 40(5) of the *Act* state that if a tenant who has received a One Month Notice to End Tenancy for Cause does not make an application for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit by that date.

The tenant did not dispute the Notice within 10 days of receiving it. I find that, pursuant to section 40(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, that being May 31, 2022. I therefore uphold the Notice.

Section 48(1) of the *Act* states:

- 48** (1) 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
- (a) the landlord's notice to end tenancy complies with section 45 [*form and content of notice to end tenancy*], and
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Pursuant to section 48(1) of the *Act*, the landlord is entitled to two-day Order of Possession because the Notice complies with section 45 of the *Act*, the tenant's application was dismissed and the Notice was upheld.

I note that pursuant to Rule 2.6 of the Residential Tenancy Branch Rules of Procedure an application for dispute resolution is not considered to have been made until either the fee has been paid or when all documents for a fee waiver have been submitted to the Residential Tenancy Branch directly or through a Service BC Office. The three-day period for completing payment under Rule 2.4 is not an extension of any statutory timelines for making an application. If payment is not completed or if all documents for a fee waiver are not submitted within three days as required, the application will be considered abandoned. To pursue the claims, the applicant must submit a new application—this does not provide an extension of time for any statutory timelines.

While the tenant may have started an application for dispute resolution to cancel the Notice within 10 days of its receipt, pursuant to Rule 2.6, the application was not considered to have been made and the conclusive presumption found in section 40 of the *Act* stands. Rule 2.6 clearly states that an extension of time for statutory timelines is not extended if an application is abandoned before it has been completed.

I also note that while all of the landlord's evidence was accepted for consideration, the findings in this decision are based on the testimony of both parties and the Notice (which the tenant testified she received both when it was originally served and in the landlord's evidence package). The contested evidence was not used in rendering this decision.

Conclusion

Pursuant to section 48 of the *Act*, I grant an Order of Possession to the landlord effective **two days after service on the tenant**. Should the tenant 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: September 14, 2022

Residential Tenancy Branch