



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLE DEVELOPMENTS LTD DBA SEABREEZE MH
PARK and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR-MT, OLC, FFT, OPR-DR, OPRM-DR, FFL

Introduction

This hearing dealt with cross applications filed by the parties. On May 25, 2022, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 39 of the *Manufactured Home Park Tenancy Act* (the “Act”), seeking more time to cancel the Notice pursuant to Section 59 of the *Act*, seeking an Order to comply pursuant to Section 55 of the *Act*, and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

On June 23, 2022, the Landlord applied for a Direct Request proceeding seeking an Order of Possession for unpaid rent based on the Notice pursuant to Section 39 of the *Act*, seeking a Monetary Order for unpaid rent pursuant to Section 60 of the *Act*, and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

On July 12, 2022, this Application was set down with the Tenant’s Application, for a participatory hearing on October 3, 2022 at 11:00 AM.

The Tenant attended the hearing, with D.D. attending as an advocate for the Tenant. H.C. attended the hearing as an agent for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they

were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing and evidence package was served to the Landlord by posting it to the Landlord's door on June 7, 2022, and H.C. confirmed that she received this package. Based on this undisputed testimony, despite this package not being served in a manner in accordance with Section 82 of the *Act*, I am satisfied that the Landlord was duly served the Tenant's Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

H.C. advised that the Notice of Hearing and evidence package was served to the Tenant by hand on or around July 12, 2022, and the Tenant confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 82 and 83 of the *Act*, I am satisfied that the Tenant was duly served the Landlord's Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- Is the Tenant entitled to more time to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Tenant entitled to recovery of the filing fee?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony

of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on October 15, 2012, that rent was currently established at \$473.00 per month, and that it was due on the first day of each month. A copy of the signed tenancy agreement was submitted as documentary evidence.

H.C. advised that the Tenant did not pay May 2022 rent, so the Notice was served to the Tenant by posting it to her door on May 4, 2022. The Notice indicated that \$473.00 was outstanding on May 1, 2022. The effective end date of the tenancy was noted as May 16, 2022, on the Notice.

The Tenant confirmed receiving the Notice on May 4, 2022; however, she could not explain why she did not dispute the Notice within five days of this date, nor could she explain why she requested more time to dispute the Notice.

H.C. testified that she discovered a money order from the Tenant for May 2022 rent in her office mailbox on May 19, 2022; however, at no point did the Tenant inform her that this was placed there. She submitted that she does not check this box daily, and usually only does so near the end of the month for any residents of the park that would still pay rent by cheque. She stated that the Tenant's rent would ordinarily be paid by auto deposit, but it would often be returned as NSF. She confirmed that the Tenant was given a receipt for use and occupancy only for May 2022 rent. As well, the Tenant has paid rent for every month up until the hearing, and the Tenant has been given a receipt for use and occupancy only for those months as well. She was uncertain if the Tenant's rent for October 2022 has cleared though.

The Tenant advised that she obtained a money order for the rent on May 9, 2022, and that she placed this in the Landlord's mailbox on that date as well. However, she confirmed that she never informed H.C. that she had done this. She stated that she has paid rent up until the date of the hearing.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 45 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 45.

Section 20 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 39 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant received this Notice on May 4, 2022. According to Section 39(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 39(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), 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 to which the notice relates by that date."*

As the fifth day fell on Monday May 9, 2022, the Tenant must have paid the rent in full or disputed the Notice by this date at the latest. While the Tenant did dispute the Notice, I note that she did so on May 25, 2022, which was well past the deadline. With respect to her request for more time to dispute the Notice, as the Tenant could not provide a valid reason for not disputing the Notice on time, I do not grant the Tenant an extension of time to dispute the Notice.

Furthermore, while the Tenant did give the Landlord a money order for rent, she testified that she placed this money order in the Landlord's mailbox on May 9, 2022. I find it important to note that Section 83 of the *Act* states that any document served by being placed in a mailbox or mail slot is deemed received after three days. As such, this money order would have been deemed received on May 12, 2022.

As such, I am satisfied that the rent was not paid in full when it was due, nor was it paid within five days of May 4, 2022. Moreover, there is no evidence before me that permitted the Tenant to withhold the rent.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 81 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 45 and 48 of the *Act*.

With respect to the rent that has been paid after service of the Notice, I accept that receipts for payments for use and occupancy only were provided. Furthermore, the consistent evidence is that rent has been paid since service of the Notice, including September 2022 rent. However, it is not clear if rent for October 2022 has been paid yet. As such, I do not find that the Landlord is entitled to a monetary award as the only possible outstanding rent could be for October 2022. If the Tenant's rent for October 2022 has not been paid, the Landlord is at liberty to make a separate Application to claim for this.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I grant an Order of Possession to the Landlord that is effective on **October 31, 2022 at 1:00 PM after service of this Order** 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.

The Landlord is also provided with a Monetary Order in the amount of **\$100.00** 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 Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: October 3, 2022

Residential Tenancy Branch