



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OP, FFL

Introduction

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

- an order of possession for cause (1 month) pursuant to section 40
- authorization to recover the filing fee for this application from the tenant pursuant to section 65.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 2:06 p.m. in order to enable the tenant to call into this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

Preliminary Issue: Service of Amended Notice of Dispute Resolution Package to Tenant

The landlord explained that the tenant's address on the original application for dispute resolution was incorrect and on September 9, 2022 she submitted an amendment document with the corrected address. The landlord testified she served the tenant personally with the amended Notice of Dispute Resolution form and evidence on September 12, 2022. The landlord stated that the tenant signed the Proof of Service form confirming receipt of the documents. The signed Proof of Service form was not on file.

Rule 3.17 of the Rules of Procedure [the "**Rules**"] "Consideration of new and relevant evidence" gives the arbitrator the discretion to determine whether to accept documentary evidence provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

The landlord uploaded the Proof of Service document immediately after the hearing. Review of the document shows the tenant signed the Proof of Service Document on September 12, 2022 confirming receipt of the Notice of Dispute Resolution and evidence package. The admission of the late evidence does not unreasonably prejudice the tenant or result in a breach of natural justice.

I find the tenant was served with the Amended Notice of Dispute Resolution package and evidence pursuant to s. 81 of the *Act*.

Rule 7.1 of the Rules stipulates that the hearing will commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may decide or dismiss the Application with or without leave to re-apply.

I decided the hearing would proceed in the absence of the tenant.

The landlord was advised that pursuant to Rule 6.11, persons are prohibited from recording dispute resolution hearings, except as allowed by Rule 6.12. As the landlord had neither requested nor been granted authorization to hire an accredited Court reporter as allowable under rule 6.12, I confirmed with the landlord that she was not recording the hearing.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) recover the filing fee;

Background and Evidence

While I have considered the documentary evidence and the testimony of the landlord not all details of her submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into an oral month to month tenancy agreement starting in the fall of 2014. Monthly rent is \$360.00 plus an additional cost pro-rated for power and is payable on the first of each month. The landlord was unable to confirm if a security deposit was paid at the start of tenancy.

The landlord stated that about 8 years ago, the tenant's mother approached the landlord and asked if her son could rent a RV pad. The landlord had a RV pad available and agreed to rent the RV pad to the woman's son. Soon after the tenant moved onto the site, he started accumulating 'stuff' and storing junk around his trailer on the RV pad. The landlord, out of deference to the tenant's mother, tried to work with the tenant to

clean up the property. The landlord issued multiple warnings, both verbal and in writing, to the tenant including a prior 10 Day Notice.

The landlord withdrew the prior 10 Day Notice after entering into a compliance agreement with the tenant. The tenant began a clean up the property and then stopped and started bringing more junk onto the site. For example, the tenant stores an old car without tires on site, that the landlord has repeatedly asked him to remove. She suggested that since he does not use the vehicle and since the vehicle has no tires, he could donate it, but the tenant refused.

Repeated requests to clean up the RV pad and remove the junk have failed. The landlord submitted into evidence photos of the accumulation of junk surrounding the trailer on the RV pad. The site is littered with bikes, bike parts, metal pots, and other assorted debris. The landlord also submitted into evidence multiple written warnings/requests sent to the tenant over the years. In fact, the landlord rented a waste bin for the tenant to dispose of the junk.

Other residents in the park complained to the landlord about the unsightly property, safety concerns, and the potential health and safety risk associated with the garbage stored on the tenant's RV pad including a bear sighting and a potential rat infestation. The fire department inspected the entire property and stated concerns about the fire hazard posed by the debris and junk on the tenant's RV pad and instructed the landlord that the site must be cleared. The RV pad also violated municipal "unsightly property" bylaws.

After the fire department inspection, the landlord, once again, spoke to and wrote to the tenant requesting he immediately clean up the site and warned him that should he fail to comply, the landlord would issue a One Month Notice for Cause. When the tenant failed to comply with the warning letter and verbal request, the landlord issued the One Month Notice.

Even after the landlord issued the Notice, the landlord approached the tenant asking him if he would clean up the property and if he was disputing the Notice. On July 31, 2022, the tenant told the landlord that he would move but he remains on the RV pad. The landlord stated that she has done her very best to gain tenant compliance and felt that she was left with no choice but to issue a One Month Notice as his actions were putting other residents' health and safety at risk.

The tenant did not apply for dispute resolution.

Analysis

Based on the oral testimony of the landlord at the time of the hearing, I am satisfied that a tenancy under the Act exists between the parties.

I have reviewed the Notice and I am satisfied that it complies with section 45 of the Act. Section 40 of the Act permits a landlord to end a tenancy for cause. A tenant who receives a notice to end tenancy for cause has 10 days after receipt to dispute the notice by making an application for dispute resolution. Failure to dispute the notice to end tenancy for cause in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy under section 40(5) of the Act.

The landlord issued the Notice on the grounds the tenant:

- seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- put the landlord's property at serious risk.

The Notice was hand delivered to the tenant on June 28, 2022 and a witnessed Proof of Service form was submitted into evidence confirming the delivery.

The tenant had 10 days after receipt of this Notice, until July 8, 2022, to dispute it with our office, but did not do so. Accordingly, pursuant to s. 40(5) of the Act, I find the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the Notice.

Since the tenant is conclusively presumed to have accepted the end of the tenancy by not filing an application to dispute the Notice in concert with the Landlord's testimony supporting why the Notice was issued, I find the landlord is entitled to an order of possession which will be effective **two (2) days** after service on the tenant.

As the landlord's application was successful, and pursuant to s.65, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

Pursuant to section 40 of the Act, I order that the tenant deliver vacant possession of the rental unit to the landlords within two (2) days of being served with a copy of this decision and attached order(s) by the landlord.

Pursuant to s. 65 of the Act, I issue a monetary order in the landlord's favour in the amount of \$100.00 for the filing fee.

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 7, 2022