



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was reconvened from a hearing on October 31, 2022 as a result of the Tenant's application under the *Manufactured Home Park Tenancy Act* (the "Act") to dispute a One Month Notice to End Tenancy for Cause dated July 9, 2022 (the "One Month Notice") pursuant to section 40.

The original hearing resulted in an interim decision dated October 31, 2022 and corrected on December 1, 2022 (the "Interim Decision"). This decision should be read together with the Interim Decision.

The Landlord attended this reconvened hearing. The Tenant did not attend. I left the teleconference hearing connection open until 1:56 pm in order to enable the Tenant to call into the hearing scheduled to start at 1:30 pm. I confirmed that the correct call-in numbers and participant access code had been provided in the notice of dispute resolution proceeding. I used the teleconference system to confirm that the Landlord and I were the only ones who had called into the hearing.

Preliminary Matter – Service of Notice for Reconvened Hearing

Records of the Residential Tenancy Branch indicate that the notice of hearing and Interim Decision were emailed to all parties on November 1, 2022. I find the Tenant was sufficiently served with notice of this reconvened hearing pursuant to section 64(2)(b) of the Act.

Preliminary Matter – Tenant's Non-attendance

Rule 7.10 of the Residential Tenancy Branch Rules of Procedure states:

7.10 Mandatory attendance

If the dispute resolution hearing is adjourned, the arbitrator will order the parties to attend on the date when the dispute resolution hearing will be reconvened.

If a party does not attend the reconvened hearing at the scheduled time, the arbitrator may commence, continue and conclude the hearing. Pursuant to Rule 7.3, the arbitrator may issue a decision and order in the absence of a party.

Having found the Tenant to be duly served with notice of this reconvened hearing, I directed the hearing to continue and be concluded in the absence of the Tenant.

I note the original hearing had been adjourned because the parties ran out of time while they were engaged in settlement discussions, after the parties had given their evidence. However, since the Tenant did not attend this reconvened hearing, no settlement was reached. As such, I will proceed to adjudicate this dispute on its merits.

Issues to be Decided

1. Is the Tenant entitled to cancel the One Month Notice?
2. Is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

This tenancy commenced approximately 10 years ago and is month-to-month. Rent is currently \$456.75 per month plus utilities. There is no written tenancy agreement.

The Tenant owns a home situated on the site, which is located on a campground and RV park operated by the Landlord. The Landlord testified that she took over the business from the previous owner in 2019.

The parties disagreed as to the correct address for the Tenant's home. The Tenant relies on a registered address that is on record with Canada Post and the regional district. The Landlord relies on a legal address for the park that is supported by records

with the BC Assessment and the Land Title Office. The Landlord testified she consulted with a city planner and was assured that the assignment of mailboxes with different street number did not mean that address is a property. Since there is no dispute about the site location, I have included references to both addresses on the cover page of this decision.

The Landlord's evidence is that it was agreed when the Tenant moved in that rent would be due on the first day of the month, and that this is reflected in the rent increase notices, invoices, and other forms submitted by the Landlord. The Landlord testified she sent email reminders to the Tenant that rent is due on the first with or without invoices. The Landlord explained that her system automatically generates invoices on the first day of each month and emails them to the park's guests. The Landlord argued that the Tenant has a history of paying rent on the first day of the month. The Landlord testified she received the information from the previous owner and that payments of rent were from the first day of each month.

The Landlord argued that the Tenant knows rent is due on the first but just does not pay on time. The Landlord submitted that the One Month Notice was issued due to the Tenant's repeatedly late payment of rent.

A copy of the One Month Notice submitted into evidence shows that it is signed by the Landlord and has an effective date of August 13, 2022. It states both the Landlord and the Tenant's version of the dispute address. The reason for the notice is repeatedly late payment of rent. The details of cause are as follows (portion redacted for privacy):

[The Tenant] was repeated paying his rent and utility fees late. It was agreed the rent of the current month and utility fees of previous month is due on the first day of each month. These are the record that his rent and utility fees were paid late for the most recent three years, in dd/mm/yyyy format. 09/08/2020, 09/09/2020, 11/11/2020. 23/12/2020, 03/02/2021, 03/03/2021, 09/06/2021, 07/07/2021, 12/08/2021, 03/09/2021, 10/11/2021, 22/12/2021, 05/01/2022, 02/02/2022, 30/03/2022, 13/04,2022, 12/05/2022, 08/06/2022, 09/07/2022

The Landlord submitted additional evidence including:

- 10 day notices to end tenancy for unpaid rent or utilities issued to the Tenant on May 8, 2021, May 15, 2021, December 14, 2021, May 11, 2022, and July 8, 2022 (collectively, the "10 Day Notices")
- notices of rent increase, invoices, and email correspondence with the Tenant

- record of e-transfer payments received from the Tenant

The Tenant acknowledged receipt of the One Month Notice via email on July 9, 2022, although the Tenant disputes having agreed to accept email service.

The Tenant testified that he usually receives an email invoice from the Landlord on the first day of each month. The Tenant testified that the Landlord sometimes sends invoices with both rent and utilities and sometimes separately. The Tenant indicated that he did not receive an invoice for July 1, 2022.

The Tenant described his home as a “modular home”. The Tenant stated his home does not have a Vehicle Identification Number (VIN), so it is not a “vehicle”. The Tenant testified that his home is 12 ft wide and cannot be towed. The Tenant stated it would cost \$10,000.00 to move his home and he would need at least 6 months.

The Tenant stated he was friends with the original owners and that the park had been originally advertised as a modular home park. The Tenant stated the previous owners had assured that he would have a separate access and driveway from the campground. The Tenant stated everything changed after he moved in. The Tenant stated he is still locked out of the property after 10:00 pm and is told that he is part of the campground.

The Tenant argued that the Landlord did not issue any receipts for “use and occupancy”. The Tenant argued that the Landlord is estopped from requiring that rent be paid on time.

The Tenant testified that with the previous owners, he usually gave cash and made the payments whenever he got paid. The Tenant stated he used to work for the former landlord and would do work in lieu of rent. The Tenant stated that the former landlord did not issue invoices at first but started to do so later.

The Tenant stated he was “late” quite a bit but was told by his lawyer that “estoppel” applies. The Tenant stated that his lawyer told him the Landlord did not issue “use and occupancy” receipts.

The Tenant stated he did not receive his invoice on the first. The Tenant testified he paid after he knew how much he owed, right after the Landlord sent the 10 day notice.

The Tenant stated the Landlord was trying to raise the rent for everyone.

The Tenant argued that the forms do not have the Tenant's "legal address". The Tenant stated that "rent has been late, but rent has been paid".

The Tenant submitted additional evidence including a handwritten statement, a photograph and floor plan of his home model, mail from the Ministry of Finance showing his mailing address, email correspondence, notice of rent increase, invoices, and receipts.

Analysis

1. Is the Tenant entitled to cancel the One Month Notice?

Section 40 of the Act permits a landlord to end a tenancy for cause upon one month's notice to the tenant. Section 40(1) describes the situations under which the landlord will have cause to terminate the tenancy.

Section 40(3) of the Act requires a notice to end tenancy for cause given by the landlord to comply with section 45, which states:

Form and content of notice to end tenancy

- 45 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the manufactured home site,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 38 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
 - (e) when given by a landlord, be in the approved form.

In this case, I have reviewed the One Month Notice and find that it complies with the requirements set out in section 45 of the Act.

I find the Tenant received a copy of the One Month Notice via email on July 7, 2022. I note the Tenant stated he did not agree in writing to accept service via email. However, I find the Tenant did receive a copy of the notice and made an application to dispute it. Therefore, I find the Tenant was sufficiently served with the One Month Notice on July 7, 2022 pursuant to section 64(2)(b) of the Act.

Section 40(4) of the Act permits a tenant to dispute a one month notice to end tenancy for cause within 10 days of receiving such notice. The tenth day after the Tenant received the One Month Notice is Sunday, July 17, 2022.

Section 25.5 of the *Interpretation Act*, RSBC 1996, c. 238 states that “If a day that is specified for doing an act falls on a holiday, the day falls on the next day that is not a holiday”. Section 29 of the *Interpretation Act* defines a “holiday” to include Sunday. In addition, according to the definition of “days” in the Rules of Procedure: “If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday the time is extended to the next day that is not a holiday.

Based on the above, I find the Tenant was required to make an application for dispute resolution by Monday, July 18, 2022. Records confirm the Tenant had made this application on July 18, 2022. As such, I find the Tenant made his application within the time limit required by section 40(4) of the Act.

Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, Rule 6.6 of the Rules of Procedure places the onus on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 40(1)(a) of the Act states as follows:

Landlord’s notice: cause

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant is repeatedly late paying the rent; [...]

Residential Tenancy Policy Guideline 38. Repeated Late Payment of Rent further states as follows:

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

In this case, I find rent is due on the first day of each month for the following reasons:

- I find the Landlord has consistently asserted in email correspondence with the Tenant, the 10 Day Notices, and notices of rent increase that rent is due on the first day of the month. I find the invoices issued to the Tenant also generally refer to a due date of the first day of each month.
- I find that in response to the Landlord's emails or 10 Day Notices, the Tenant would apologize and pay the overdue rent. For example, in an email dated May 18, 2021, the Tenant wrote to the Landlord in part as follows: "I am writing to you about the eviction notice I have received. Im sorry I am late. I am just waiting for a settlement for worksafebc. [...] I am finely (sic) doing better. As soon as worksafe pays me out and closes my file I will be going back to work. [...] If you would be so kind as to give me untill (sic) the 2nd of June ill pay for May and June then. It would be much appreciated. [...]" In an email dated December 15, 2021, the Tenant wrote: "Sorry about the rent. I get paid next Wednesday. I can pay it then."
- I find there is insufficient evidence to suggest that prior to this hearing, the Tenant had communicated any objections or disagreement with rent being due on the first day of each month to the Landlord.
- I find that except for June 2021 rent, the Landlord did not give the Tenant permission in advance to pay rent after the first day of the month.
- I find there is no evidence to suggest that the parties had ever discussed that rent should be due on any other day of the month, such as the last day of the month.

Based on the foregoing, I conclude that the rent (\$456.75, not including utilities) was due on the first day of each month.

During the original hearing, the Tenant raised the argument of estoppel. The Supreme Court of British Columbia in *Guevara v. Louie*, 2020 BCSC 380 at para. 63 stated as follows regarding the principle of estoppel:

“[...] the equitable principle of estoppel applies where a person with a formal right “represents that those rights will be compromised or varied:” *Tymchuk v. D.L.B. Properties*, 2000 SKQB 155 at paras. 11-17. Unlike waiver, the principle of estoppel does not require a reliance on unequivocal conduct, but rather “whether the conduct, when viewed through the eyes of the party raising the doctrine, was such as would reasonably lead that person to rely upon it:” *Bowen v. O’Brien Financial Corp.*, [1991] B.C.J. No. 3690 (C.A.).

Based on the evidence presented, I find the Landlord did not act in a way that would reasonably lead the Tenant to believe that rent did not have to be paid on time.

As mentioned above, I find the Landlord to have been consistent her position based on the email correspondence, 10 Day Notices, and notices of rent increase given to the Tenant. I find the Landlord accepted the Tenant’s request for more time to pay May and June 2021 rent. However, I find in an email dated December 16, 2021, the Landlord clearly reminded the Tenant that the due date is the “1st day of each month” and that the Landlord was “sorry that we will not be able to accommodate late payment starting from January 1st 2022”.

Therefore, I do not find the Landlord is estopped from insisting that rent be paid on time in the circumstances.

Based on the Landlord’s record of e-transfers received from the Tenant and the payment dates stated in the One Month Notice, I find the Tenant did not pay rent by the first day of each month from January 2022 to July 2022. I find there is insufficient evidence to suggest that any of these late payments were caused by exceptional circumstances. I find the Landlord issued two of the 10 Day Notices to the Tenant during this period. I find the Landlord acted in a timely manner to issue the One Month Notice after the most recent late rent payment in July 2022.

In addition, I find that since the Tenant has disputed the One Month Notice and has received the Landlord’s evidence for this hearing which states the Landlord’s position, a

failure by the Landlord to issue receipts for “use and occupancy only” in the meantime does not imply the Landlord has agreed to waive the One Month Notice.

Based on the foregoing, I am satisfied that the Landlord has proven cause under section 40(1)(a) of the Act on a balance of probabilities.

2. Is the Landlord entitled to an Order of Possession?

Section 48(1) of the Act states:

Order of possession for the landlord

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.

Having found the One Month Notice to comply with the requirements of section 45 and having dismissed the Tenant's claim to dispute the One Month Notice, I find the Landlord is entitled to an Order of Possession pursuant to section 48(1) of the Act.

Residential Tenancy Policy Guideline 54. Ending a Tenancy: Orders of Possession states:

B. DETERMINING THE EFFECTIVE DATE OF AN ORDER OF POSSESSION

An application for dispute resolution relating to a notice to end tenancy may be heard after the effective date set out on the notice to end tenancy. Effective dates for orders of possession in these circumstances have generally been set for two days after the order is received. However, an arbitrator may consider extending the effective date of an order of possession beyond the usual two days provided.

While there are many factors an arbitrator may consider when determining the effective date of an order of possession some examples are:

- The point up to which the rent has been paid.
- The length of the tenancy.

- e.g., If a tenant has lived in the unit for a number of years, they may need more than two days to vacate the unit.
- If the tenant provides evidence that it would be unreasonable to vacate the property in two days.
 - e.g., If the tenant provides evidence of a disability or a chronic health condition.

An arbitrator may also canvas the parties at the hearing to determine whether the landlord and tenant can agree on an effective date for the order of possession. If there is a date both parties can agree to, then the arbitrator may issue an order of possession using the mutually agreed upon effective date.

Ultimately, the arbitrator has the discretion to set the effective date of the order of possession and may do so based on what they have determined is appropriate given the totality of the evidence and submissions of the parties.

In this case, I accept the Tenant will need more time to move his home from the park site given the efforts that will be required to move the Tenant's home and the fact that the Tenant has been a long-term resident of the park. I find a period of three months will be sufficient for the Tenant to vacate the park in the circumstances. As such, I order that the effective date of the One Month Notice is extended to February 28, 2023. I grant the Landlord an Order of Possession effective at 1:00 pm on that date.

Conclusion

The Tenant's application is dismissed without leave to re-apply.

I order that the effective date of the One Month Notice is extended to February 28, 2023. All rights and obligations of the parties under the Act shall continue until the tenancy is ended.

Pursuant to section 48(1) of the Act, I grant an Order of Possession to the Landlord effective **1:00 pm on February 28, 2023**. 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 Supreme Court of British Columbia 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: December 1, 2022

Residential Tenancy Branch