



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NEWTON MOBILE HOME PARK LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord's application: OPC FFL
Tenants' application: CNC-MT OLC

Introduction

This hearing dealt with an Application for Dispute Resolution (application) by both parties seeking remedy under the *Manufactured Home Park Tenancy Act* (Act). The landlord has applied for an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause dated July 16, 2022 (1 Month Notice) and to recover the cost of the filing fee. The tenants applied for more time to make an application to cancel a 1 Month Notice and for an order directing the landlord to comply with the Act, regulation or tenancy agreement.

An agent for the landlord, LM (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding dated August 31, 2022 (Notice of Hearing), application and documentary evidence (Hearing Package) were considered. The agent testified that the tenants were served with the Hearing Package by personal service on September 1, 2022, which was witnessed by KP. The agent also testified that the landlord was not served with any application from the tenants. Therefore, after the 10-minute mandatory waiting period, the tenants' application was **dismissed without leave to reapply**, due to a service issue.

Based on the undisputed testimony of the agent, and without any evidence to prove to the contrary, I find the tenants were served personally on September 1, 2022 with the landlord's Hearing Package. Residential Tenancy Branch (RTB) Rule 7.3 of the Rules of Procedure (Rules) applies and states:

Rule 7.3 Consequences of not attending the hearing

The arbitrator may conduct the hearing in the absence of a party or dismiss the application, with or without leave to re-apply.

Based on the above, the hearing proceeded without the tenants present as I am satisfied that the tenants were served with the Hearing Package as indicated above.

Preliminary and Procedural Matter

The agent confirmed the email address of the landlord at the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the tenants failed to provide an email address, the decision will be sent by regular mail to the tenants, who continue to occupy the rental site according to the agent.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act based on an undisputed 1 Month Notice?
- If yes, is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The agent stated that the tenancy began on April 2, 2017. Monthly rent is \$647.90 per month and is due on the first day of each month.

The agent testified that the 1 Month Notice dated July 16, 2022 was served on July 16, 2022 by posting to the tenants' door and was witnessed by CP. The landlord lists two causes on the 1 Month Notice, namely:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

In their application, the landlord writes the following:

Tenants has broken the agreement that was made with Arbitrator J. Ceraldi, that the dog to be leashed, and they where to abide by the park rules. The dog was off leash a few times, I talk to them about it and send them registered letter that they did not pick up. And now they are renting out a room which is not allowed.

[reproduced as written]

The agent testified that the tenants were sent a warning letter (Warning Letter) about their dog having to be leashed via registered mail. The registered mail tracking number has been included on the cover page of this decision for ease of reference. The agent testified that the Warning Letter was mailed on June 27, 2022 and that the tenants failed to pick up the registered mail and it was eventually returned to sender and marked “unclaimed.” Section 90 of the Act indicates that documents served by registered mail are deemed served 5 days after they are mailed. The agent also presented several letters of complaint from other park residents regarding the tenants’ dog not being leashed, which results in the dog urinating and defecating on the property of other park residents.

The agent stated that they are willing to accept an order of possession for April 30, 2023 at 1:00 p.m. versus the end of December 2022 to give the tenants more time to vacate the rental site. The effective vacancy date listed on the 1 Month Notice was August 31, 2022, which has passed.

Analysis

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

Order of Possession – I accept the undisputed testimony of the agent and I find that the tenants failed to dispute the 1 Month Notice. I find that by filing and application and failing to serve the landlord, that that equates to not disputing the 1 Month Notice in the first instance. Therefore, I find that section 40(5) of the Act applies and states:

40(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the manufactured home site by that date.
[emphasis added]

As the effective vacancy date of August 31, 2022 has passed and the tenants continue to occupy the rental site, I find the tenants are conclusively presumed to have accepted that the tenancy ended on August 31, 2022 by failing to serve the landlord with their application, which has been dismissed without leave to reapply due to a service issue.

I am also satisfied based on the undisputed testimony of the agent that the tenants have done the following, which was undisputed:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

Based on the above, I grant the landlord an order of possession effective **April 30, 2023 at 1:00 p.m.** That date and time have been used based on the suggestion of the agent during the hearing.

Given the above, and as the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100** filing fee pursuant to section 65 of the Act.

Monetary Order – The landlord is granted a monetary order pursuant to section 60 of the Act in the amount of \$100 as described above.

Conclusion

The landlord's claim is fully successful. The tenancy ended on August 31, 2022 and the tenants have been over-holding the rental site since that date.

The landlord has been granted an order of possession effective April 30, 2023 at 1:00 p.m. This order must be served on the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted a monetary order under section 60 of the Act in the amount of \$100 for the filing fee. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the landlord and sent by regular mail to the tenants.

The monetary order and the order of possession will be emailed to the landlord only for service on the tenants.

The tenants are cautioned that they can be held liable for all costs related to the enforcement of the order of possession and monetary order, including but not limited to court costs and bailiff fees.

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 *Manufactured Home Park Tenancy Act*.

Dated: December 19, 2022

Residential Tenancy Branch