



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding CRYSTAL RIVER COURT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNC, MNRT, FFT (Tenants)
 OPC, FFL (Landlord)

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenants filed their application October 11, 2022 (the “Tenants’ Application”). The Tenants applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated September 28, 2022 (the “Notice”)
- To be paid back for the cost of emergency repairs made during the tenancy
- To recover the filing fee

The Landlord filed their application January 06, 2023 (the “Landlord’s Application”). The Landlord applied as follows:

- For an Order of Possession based on the Notice
- To recover the filing fee

The Tenants and Agent for the Landlord appeared at the hearing. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenants I would consider the dispute of the Notice and request for the filing fee but dismiss the request to be paid back for the cost of emergency repairs because this issue is not sufficiently related to the dispute of the

Notice. The request to be paid back for the cost of emergency repairs is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Manufactured Home Park Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing packages and evidence, and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered all evidence provided. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession based on the Notice?
3. Is either party entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. Rent in the agreement is due on or before the first day of each month.

The Notice was submitted. The Notice has an effective date of October 31, 2022. The grounds for the Notice are:

1. Repeated late payment of rent
2. Failure to do required repairs
3. Breach of a material term

The Tenants did not raise an issue with the form or content of the Notice when asked.

The Agent testified that the Notice was sent to the Tenants by registered mail September 30, 2022. The Tenants testified that they received the Notice October 06, 2022.

The Agent for the Landlord testified that in 2022, the Tenants paid rent late in April, May, June, August and September. The Landlord submitted documentary evidence showing the Tenants were issued 10 Day Notices for unpaid rent in April, June and August of 2022. The evidence also shows the Tenants were sent emails about late payment of rent in May and September of 2022.

The Tenants agreed rent was paid late for the months stated by the Agent for the Landlord. The Tenants testified that they live outside of the country and submitted that this is an extenuating circumstance and resulted in them paying rent late because they were not aware of the timelines for transferring money. The Tenants acknowledged they could have sent their rent earlier to avoid this issue. The Tenants testified that rent was only ever paid a couple of days late. The Tenants testified that they have now given the Landlord post dated cheques so rent will not be paid late. The Tenants testified that part of the issue was simply not realizing what date it was or there being holidays that delayed payment.

The Tenants did not submit any documentary evidence to support their position about why rent was paid late in the months noted in 2022.

I heard the parties on the remaining grounds for the Notice; however, I do not find it necessary to outline the testimony or submissions here.

Analysis

The Notice was issued in part pursuant to section 40(1)(a) of the *Act* which states:

40 (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...

The Tenants had 10 days to dispute the Notice pursuant to section 40(4) of the *Act*. I accept that the Tenants received the Notice October 06, 2022, and filed their application October 11, 2022, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules.

RTB Policy Guideline 38 states:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

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.

I accept that the Tenants paid rent late five times in 2022 prior to the Notice being issued. The Landlord was justified in issuing the Notice based on five late rent payments. I find the payments were “repeatedly” late because they were not far apart and in fact occurred five times in six months prior to the Notice being issued, which is basically consecutive. I do not find that the Landlord waived their right to end this tenancy based on repeated late payment of rent because the Landlord issued 10 Day Notices and sent the Tenants emails about the late rent which showed the Landlord was enforcing their right to receive rent on the first day of each month. Further, the Landlord issued the Notice in September of 2022, in the very month the last late rent payment was made.

Living out of the country, or being out of the country, at the time rent is due is not an exceptional circumstance. The Tenants could have provided the Landlord post dated

cheques prior to leaving the country or even while out of the country. Further, the Tenants could have looked into how long it takes to transfer money due to being out of the country and could have paid rent so that it was received by the Landlord on or before the first day of each month as required. Further, after the first late rent payment, the Tenants would have known it took time to transfer money and should have paid rent accordingly. The late rent payments were not due to exceptional or unforeseen circumstances, they were within the Tenants' control.

It is not relevant that the Tenants have now provided the Landlord with post dated cheques for rent. The issue before me is whether the Tenants were repeatedly late paying rent when the Notice was issued, and it is clear they were. The Landlord had grounds to issue the Notice.

I have reviewed the Notice and find it complies in form and content with section 45 of the *Act* as required by section 40(3) of the *Act*.

Given the above, I dismiss the Tenants' dispute of 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.

The Landlord is entitled to an Order of Possession pursuant to section 48(1) of the *Act* and is issued an Order of Possession effective March 31, 2023, as requested by the Agent for the Landlord.

The Tenants are not entitled to recover the filing fee because they have not been successful on their application and therefore this request is dismissed without leave to re-apply.

I decline to award the Landlord recovery of the filing fee because the Order of Possession is being issued pursuant to the Tenants' application and there was no need for the Landlord to file a further application about the Notice.

Conclusion

The Landlord is issued an Order of Possession **effective at 1:00 p.m. on March 31, 2023**. This Order must be served on the Tenants. If the Tenants do not comply with the Order, it may be filed in the Supreme 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 *Act*.

Dated: February 23, 2023

Residential Tenancy Branch