



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding Parklands Mobile Home
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR-MT, OLC, OPR-DR, MNR-DR, FFL**

Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties pursuant to the Manufactured Home Park Tenancy Act (the "Act") for Orders as follows:

The tenant applied as follows:

- For cancellation of the landlords' 10 Day Notice to End Tenancy for Unpaid Rent ("10 Day Notice") pursuant to section 39 of the Act
- For an order requiring the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 55 of the Act

The landlord applied as follows:

- For a monetary order for unpaid rent pursuant to section 60 of the Act
- For an order of possession pursuant to section 48 of the Act
- For reimbursement of the filing fee pursuant to section 65 of the Act

Both parties attended the hearing with the landlord being represented by agent UT and the tenant TR appeared for herself. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

The parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 81 and 82 of the Act.

Preliminary Matter

Pursuant to section 57(3)(c) of the Act the style of cause is amended to reflect the correct landlord.

Pursuant to section 46 of the Act the effective date of the notice is properly amended to November 24, 2024.

Service

The landlord testified that the 10 Day Notice was posted on the tenant's trailer on November 14, 2022. The tenant confirmed receipt of the 10 Day Notice dated November 4, 2022, but she stated she was away in another city helping a family member and didn't receive the 10 Day Notice until November 23, 2022. The parties agree the 10 Day Notice was taped to the door of the tenant's trailer. I find that the tenant was away and pursuant to section 64(2)(b) of the Act I find that the tenant was served with the 10 Day Notice on November 23, 2022.

Issue(s) to be Decided

1. Is the 10 Day Notice valid and enforceable against the tenant? If so, is the landlord entitled to an order of possession?
2. Is the tenant entitled to an order requiring the landlord to comply with the Act, regulation and/or the tenancy agreement?
3. Is the landlord entitled to a monetary order for compensation for unpaid rent?
4. Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy commenced February 28, 2000. Current rent is \$411.00 per month.

The landlord testified that the tenant's November rent cheque did not clear. This information came to the attention of the landlord's agent on November 13, 2022 and as a result the landlord served the 10 Day Notice. The tenant paid \$808.00 plus a \$25.00

late fee for use and occupancy of the manufactured home site in December 2020. The landlord sent a letter to the tenant December 21, 2022 confirming receipt of that payment. The landlord produced the letter in evidence. The landlord isn't sure of the exact date the payment was made but believes it was December 16, 2022 based on the date on the envelope the payment was provided in.

The tenant testified she was away from her home until November 23, 2022 and she received the 10 Day Notice on November 23, 2022. She attempted to pay the rent on November 24, 2022 by handing it personally to the landlord. The tenant alleged that the landlord refused to accept the rent, so she sent the rent to the landlord by registered mail. The tenant provided two written statements from individuals who stated that they witnessed the tenant trying to pay her rent and the landlord refused to take the money.

The landlord denies that the tenant tried to pay the rent in person on November 24, 2022.

Analysis

RTB Rules of Procedure 6.6 states, "The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy." In this case, the landlord has the burden of proving the validity of the 10 Day Notice served on the tenant.

Section 39 of the Act states that upon receipt of a 10 Day Notice the tenant has 5 days to either pay the rent or file a dispute. I have found that the tenant is deemed to have received the 10 Day Notice on November 23, 2022 and therefore had until November 28, 2022 to pay the rent or file a dispute. The tenant filed her application for dispute resolution on November 24, 2022 which is within the required time period.

As the tenant filed the dispute within the requisite time period, I will consider whether she paid her rent within the 5-day time period allowed for under the Act. Based on the evidence of the tenant, including the witness statements of the two witnesses that witnessed the tenant attempt to pay her rent, I find that the tenant attempted to pay the

outstanding rent on November 24, 2022 and the landlord refused to accept the payment.

The landlord's application is dismissed in its entirety.

The tenant's application is granted. Pursuant to section 39(4)(a) of the Act the 10 Day Notice is cancelled.

Conclusion

The 10 Day Notice is cancelled. The tenancy shall continue until it is ended in accordance with the Act.

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: March 22, 2023

Residential Tenancy Branch