



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNL FFT

This hearing dealt with the tenant's Application for Dispute Resolution (application) seeking remedy originally under the *Residential Tenancy Act* to cancel a 2 Month Notice to End Tenancy for Landlord's Use of Property that was not dated (2 Month Notice) and to recover the cost of the filing fee.

The tenant and the landlords, and counsel for the landlords, NK (counsel) attended the teleconference hearing. The tenant and landlords were affirmed and prior to the hearing both parties had the ability to serve documentary evidence. Counsel was not affirmed as they are an officer of the court. The parties were also provided an overview of the hearing process. I have only considered the evidence that was served in accordance with the Residential Tenancy Branch (RTB) Rules of Procedure (Rules). Words utilizing the singular shall also include the plural and vice versa where the context requires.

Preliminary and Procedural Matters

At the outset of the hearing, the parties agreed that the rental site is what is being rented per month, and according, the parties were advised that I was amending the application from the *Residential Tenancy Act (RTA)* to the *Manufactured Home Park Tenancy Act (MHPTA)* as I find the *RTA* does not apply to this living situation. Furthermore, a copy of the tenancy agreement was submitted which I find confirms the MHPTA applies.

In addition, the parties confirmed their email addresses at the outset of the hearing. The parties were advised that the decision would be emailed to both parties.


Issues to be Decided

- Does the MHPTA permit a 2 Month Notice to be issued?
- If no, is it cancelled as there is no authority under the Act to issue such a notice?

- Is the tenant entitled to the recovery of the cost of the filing fee?

Background and Evidence

The parties were advised during the hearing that the 2 Month Notice submitted in evidence was under the RTA and not the MHPTA and was not signed or dated by the landlord. I have included two portions of the 2 Month Notice below for reference:

 BRITISH COLUMBIA <small>Residential Tenancy Branch</small>		Two Month Notice to End Tenancy For Landlord's Use of Property or Because the Tenant Does Not Qualify for Subsidized Rental Unit Residential Tenancy Act, s.49 or s.49.1 #RTB-32		
Tenant: This is a legal notice that could lead to you being evicted from your home				
HOW TO DISPUTE THIS NOTICE You have the right to dispute this Notice within 15 days of receiving it, by filing an Application for Dispute Resolution with the Residential Tenancy Branch online, in person at any Service BC Office or by going to the Residential Tenancy Branch Office at #400 - 5021 Kingsway in Burnaby. If you do not apply within the required time limit, you are presumed to accept that the tenancy is ending and must move out of the rental unit by the effective date of this Notice.				
To the Tenant: (use Schedule of Parties form #RTB-26 to list additional tenants)				
I, the Landlord, give you Two Month's Notice to move out of the rental unit located at:				
unit #	street # and name	city	province	postal code
		Squamish	BC	V0N
You must move out of the rental unit by:		DD/MM/YYYY 31-Oct-2022		
name of landlord/agent		signature of landlord/agent	date signed DD/MM/YYYY	
<small>Your personal information is collected under section 26 (a) and (c) of the Freedom of Information and Protection of Privacy Act for the purpose of administering the Residential Tenancy Act. If you have any questions regarding the collection of your personal information, please call 604-660-1020 in Greater Vancouver; 250-367-1602 in Victoria; or 1-800-665-8779 elsewhere in B.C.</small>				
Residential Tenancy Branch Office of Housing and Construction Standards #RTB-32 (2021/03/22)		See pages 3 and 4 for important information		Page 1 of 4

[personal information redacted to protect privacy]

Analysis

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

2 Month Notice issued by landlord – Section 42 of the *MHPTA* does not provide the option to end a tenancy by way of a 2 Month Notice. In other words, there is no 2 Month Notice available for service under the *MHPTA*. Section 42 of the *MHPTA* applies and states:

Landlord's notice: landlord's use of property

42 (1) Subject to section 44 [*tenant's compensation: section 42 notice*], a landlord may end a tenancy agreement by giving notice to end the tenancy agreement **if the landlord has all the necessary permits and approvals required by law, and intends in good faith, to convert all or a significant part of the manufactured home park to a non-residential use or a residential use other than a manufactured home park.**

(2) A notice to end a tenancy under this section must end the tenancy effective on a date that

(a) is not earlier than 12 months after the date the notice is received, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) A notice under this section must comply with section 45 [*form and content of notice to end tenancy*].

[emphasis added]

Section 37 of the *MHPTA* sets out how a tenancy ends, which states:

How a tenancy ends

37(1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 38 [*tenant's notice*];

(ii) section 39 [*landlord's notice: non-payment of rent*];

(iii) section 40 [*landlord's notice: cause*];

(iv) section 41 [*landlord's notice: end of employment*];

(v) section 42 [*landlord's notice: landlord's use of property*];

(vi) section 43 [*tenant may end tenancy early*];

- (b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 89 (2) (a.1), requires the tenant to vacate the manufactured home site at the end of the term;
- (c) the landlord and tenant agree in writing to end the tenancy;
- (d) the tenant vacates the manufactured home site or abandons a manufactured home on the site;
- (e) the tenancy agreement is frustrated;
- (f) the director orders that the tenancy is ended;
- (g) the tenancy agreement is a sublease agreement.

Given the above, I find the landlord had no right under the *MHPTA* to serve a 2 Month Notice under the *RTA* as I find the *RTA* does not apply to this living arrangement created under the *MHPTA*.

Furthermore, section 45 of the *MHPTA* applies and 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.**
[emphasis added]

Given the above, I find the landlord failed to comply with sections 45(a) and 45(e) by failing to use the approved form and failing to sign and date the notice served, which I find was an incorrect notice that has no force or effect under the *MHPTA*.

Therefore, I find the 2 Month Notice is not valid and has no force or effect and does not impact the tenancy whatsoever.

In addition, for having served an unlawful 2 Month Notice on the tenant, **I authorize** the tenant a one-time rent reduction in the amount of **\$100** from a future month's rent in full satisfaction of the recovery of the cost of the filing fee. This is pursuant to section 65 of the *MHPTA*.

In addition, I make the following order pursuant to section 55(3) of the *MHPTA*:

I ORDER the tenancy to continue until ended in accordance with the *MHPTA*.

Conclusion

The 2 Month Notice that was not dated is cancelled and is of no force or effect as it is not permitted under section 37 of the *MHPTA* as an approved way to end a tenancy.

The tenancy shall continue until ended in accordance with the Act.

The tenant is authorized to deduct \$100 from a future month of rent in full satisfaction of the filing fee under the Act.

This decision will be emailed to both parties as indicated above.

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: March 14, 2023

Residential Tenancy Branch