



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 0868732 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

On February 24, 2023, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 40 of the *Manufactured Home Park Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

On March 1, 2023, this hearing was scheduled to commence via teleconference at 1:30 PM on May 12, 2023.

Rule 7.1 of the Rules of Procedure stipulates that the hearing must commence at the scheduled time unless otherwise decided by the Arbitrator. The Arbitrator may conduct the hearing in the absence of a party and may make a Decision or dismiss the Application, with or without leave to re-apply.

T.L., M.K., and W.E. attended the hearing as agents for the Landlord; however, the Tenant did not attend the hearing at any point during the 19-minute teleconference. At the outset of the hearing, I informed the parties that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

W.E. advised that she personally served the Notice of Hearing and evidence package to the Tenant by hand on March 1, 2023, and T.L. testified that he had in his possession a proof of service form corroborating this being done. Based on this solemnly affirmed, undisputed testimony, I am satisfied that the Tenant has been duly served the Landlord’s Notice of Hearing and evidence package. As such, I have accepted the Landlord’s documentary evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

W.E. advised that the tenancy started on September 1, 2020, that the rent was currently established in the amount of \$417.00 per month, and that it was due on the first day of each month. A copy of the signed tenancy signed agreement was submitted as documentary evidence for consideration.

T.L. then testified that the Notice was served to the Tenant by being placed in the Tenant's mailbox on November 8, 2022, and he referenced a proof of service form submitted as documentary evidence to corroborate this. The reason the Landlord served the Notice is because the "Tenant has not done required repairs of damage to the unit/site/property/park." The effective end date of the tenancy was noted on the Notice as December 12, 2022. However, this effective date is incorrect, and will automatically self-correct to December 31, 2022, pursuant to Section 46 of the *Act*.

As well, he advised that the Tenant did make an Application to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, and this matter was set down for a hearing on February 13, 2023 (the relevant file number is noted on the first page of this Decision). While a copy of this Decision was not submitted for my consideration, T.L. testified that the Tenant did not raise the possibility that she disputed the wrong notice to end tenancy in error and request to amend that Application, nor did she request that the Arbitrator grant her more time to dispute the Notice in future. As such, I am satisfied that

the Tenant never disputed the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 45 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 45, and I find that it is a valid Notice.

Based on the undisputed evidence before me, I am satisfied that the Notice was placed in the Tenant's mailbox on November 8, 2022, and pursuant to Section 83 of the *Act*, this Notice was deemed received on November 11, 2022. According to Section 40(4) of the *Act*, the Tenant had 10 days to dispute this Notice, and Section 40(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date."*

After being deemed to have received the Notice, the tenth day fell on Monday November 21, 2022, and the undisputed evidence is that the Tenant did not dispute this Notice at all. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the first and third page of the Notice.

Ultimately, as the Tenant did not dispute the Notice, I am satisfied that the Tenant was conclusively presumed to have accepted the Notice, pursuant to Section 40(5) of the *Act*. As such, I find that the Landlord is entitled to an Order of Possession pursuant to Section 48(2) of the *Act*. Consequently, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this Application.

Conclusion

Based on the above, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. This Order must be served on the Tenant by the Landlord. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$100.00** to serve and enforce upon the Tenant. The Order must be served on the Tenant by the Landlord. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Manufactured Home Park Tenancy Act*.

Dated: May 8, 2023

Residential Tenancy Branch