



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes Tenant application 1: CNC, FF
Tenant application 2: CNLC, FF

Introduction, Preliminary and Procedural Matters-

A hearing convened on July 14, 2023, in response to the tenant's two applications for dispute resolution (application) seeking remedy under the *Manufactured Home Park Tenancy Act (Act)* for: an order cancelling the One Month Notice to End Tenancy for Cause (1 Month Notice); an order cancelling a 12 Month Notice to End Tenancy for Conversion of Manufactured Home Park; recovery of the filing fees.

The hearing was adjourned due to insufficient time to conclude all matters in dispute.

The hearing reconvened on July 27, 2023 and was adjourned due to insufficient time to conclude all matters in dispute.

The two hearings were conducted before another arbitrator, who is now unable to render a Decision in this matter. Staff from the Residential Tenancy Branch (RTB) contacted, or attempted to contact, both parties to explain the situation. The landlord's legal counsel acknowledged they were aware that the original arbitrator was unable to conclude the matters; however, the tenant's legal counsel was not aware of the situation. Notes to file on the RTB system reflect that the office of the tenant's legal counsel was contacted, but were not able to speak to anyone or leave a message.

I was designated to conclude the matters at issue, in the manner I chose. The options included starting the hearing from the beginning, listening to the RTB recordings from the first two hearings, along with further submissions at the 2nd reconvened hearing, or concluding the hearing based on written submissions or further evidence taken at the reconvened hearing on August 10, 2023.

I note that the original arbitrator made two Interim Decisions, both of which I have reviewed, along with all submitted documentary evidence. In the Interim Decisions, the original arbitrator found sufficient evidence that the landlord was served the tenant's application for dispute resolution, evidence, and notice of hearing (NODRP) by

registered mail, and the tenant's evidence was determined to be served in accordance with the requirements of the Act. No documentary evidence was filed by the landlord.

The executor of the tenant's estate, PW, the tenant's legal counsel, (AB/tenant's counsel), the co-executors of the landlord's estate, DW and PR, and the landlord's legal counsel, (KM/landlord's counsel), attended all three hearings. Various witnesses also provided testimony at the first two hearings and a witness for the tenant called into the final hearing on August 10, 2023. The testimony of the witness was not heard and the witness was excluded from the hearing.

At the first two hearings, the Interim Decisions reflect that the parties were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to the original arbitrator. The tenant's counsel stated that they had not yet been given full opportunity to bring forth their claim.

I elected to continue the hearing, due to my review of the two Notices to end the tenancy, for the reasons set out in this Decision.

For the purposes of the final Decision, I have reviewed all relevant and necessary evidence before me that met the requirements of the RTB Rules of Procedure (Rules). Further, only the evidence specifically relevant to the issues and findings in this matter are described in this Decision, per Rule 3.6.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Is the tenant entitled to cancellation of the 2 Notices to end the tenancy?

Is the tenant entitled to recovery of the filing fee?

Background and Evidence

Through the written submissions of the tenant's counsel, the details and background of the tenancy are as follows:

The original tenants, MT and LT, were a married couple. MT died on January 7, 2022, and LT died on March 15, 2023. The executrix of the estate of LT is PW, daughter of MT and LT, having been granted probate on June 26, 2023. PW continues to pay the monthly rent.

The property in question is a 5 acre parcel of land on which the original tenants moved their manufactured home, in 1991. The lease agreement, which was titled, "Tenant Estoppel Certificate", indicates the terms of rent set at \$150 per month and the term of the lease would be until the property was removed from the Agricultural Land Reserve (ALR). To this day, according to the tenant's written statement, the land has never been removed from the ALR.

On March 18, 2023, the landlord, JRW, died, three days after the last tenant, LT. Since the death of JRW, DW has served a 1 Month Notice dated March 31, 2023, and a Two Month Notice to End Tenancy for Landlord's Use of Property (2 Month Notice), dated March 31, 2023.

In their written submission, the tenant's counsel challenged the validity of both the 1 Month Notice and the 2 Month Notice. I note that the tenant, in their second application, marked their request to cancel a 12 Month Notice, which deals with conversion of a manufactured home park. However, the tenant was actually served with a 2 Month Notice.

1 Month Notice –

Tenant's counsel argued that the 1 Month Notice is invalid due to insufficient details for terminating the tenancy for cause.

Filed in evidence was the 1 Month Notice. The Notice was dated March 31, 2023 and listed an effective move-out date of April 30, 2023. The Notice was signed by DW, listed JRW as landlord, and listed MT, LT, and Estate of LT as tenants.

The cause listed on the 1 Month Notice was, " the *tenant knowingly gave false information to prospective tenant or purchaser of the site or park*".

In the Details of Causes portion of the 1 Month Notice, the landlord writes as follows:

Details of Cause(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

Details of the Event(s):

On multiple occasions Tenants provided false information directly and indirectly to prospective Buyers under Buy/Sell agreements and/or to their financing institution , causing subjects to not follow through. This has been documented in evidence and will be supported during any potential review panel.

[Reproduced as written]

The landlord's counsel asserted the issues leading to the 1 Month Notice had been building.

2 Month Notice –

Filed in evidence was the 2 Month Notice. The Notice was date March 31, 2023 and listed an effective move-out date of May 31, 2023. The Notice was signed by DW, listed JRW as landlord, and listed MT, LT, and Estate of LT as tenants.

DW did not mark any of the boxes reserved for reasons ending for a tenancy under the *Residential Tenancy Act*, but instead made a handwritten notation as follows: *“Landlord is returning tenants land to its original use of ALR farmland”*.

No further submissions or testimony was required from this point, as set out below.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

1 Month Notice –

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

When a tenant disputes a Notice to end a tenancy, the onus of proof is on the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, it will be cancelled. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

The landlord is instructed on the Details of Causes portion of the 1 Month Notice to describe what, where, and who caused the issue and included dates/times, names, etc. The landlord, on the Notice form, is informed that this evidence is **required** or the Notice may be cancelled.

I have reviewed the Notice and I find the landlord did not provide sufficient, required information in the Details of Causes. The landlord's representative failed to include any

specific instances where the tenants provided false information, dates, times or names. I find the use of the term, “directly or indirectly” is vague on its face and not specific to any one, or multiple instances of providing false information. Though the landlord’s representative said the use of alleged false information has been documented and would be supported during “any potential review panel”, no evidence was provided. It was unclear what the landlord meant by a review panel. I find this vague and unsupported statement would be insufficient for the tenant to properly rebut the Notice.

The landlord’s counsel suggested that matters had been ongoing, but without dates, times, or names, presumably any of the allegations of cause would have occurred prior to the last tenant’s death. Without the tenant present, the tenant’s representative would not be able to respond to the allegations.

As I informed the parties at the hearing, I found the 1 Month Notice deficient on its face for the reasons given above and no further testimony was required.

Therefore, I find the Notice is not valid as it is missing necessary and required information. The Act requires that notices to end tenancy issued by the landlord be in the approved form due to the fact that the approved form contains **all** of the required information a tenant would need to dispute the Notice if necessary.

As a result of the above, I **order** the One Month Notice in this matter is **cancelled** and is of **no force or effect**.

2 Month Notice -

This dispute I find falls under the Manufactured Home Park Tenancy Act (MHPTA), as filed by the applicant. The home in question is a manufactured home on the 5 acre plot of land, and a subsequent manufactured home that was owned and occupied by the tenants since 1991, until their deaths. The tenant’s executor has taken over the responsibility of the tenancy.

The 2 Month Notice served by the landlord’s representative to the tenant’s representative is a form used only for residential tenancies under the *Residential Tenancy Act (RTA)*. Therefore, a Notice to end tenancy used exclusively under the RTA is invalid and not enforceable. The reasons for ending a tenancy under the RTA are not applicable to, or listed under, the MHPTA.

As a result of the above, I **order** the Two Month Notice in this matter is **cancelled** and is of **no force or effect**.

As I have cancelled the 1 Month Notice and the 2 Month Notice, I order the tenancy shall continue until it is ended in accordance with the MHPTA.

For the above reasons, I grant the tenant's applications. As the tenant's applications had merit, I grant the tenant the recovery of **one** filing fee of \$100. I do not grant recovery of two filing fees, as the tenant could have amended their original application.

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. The tenant should inform the landlord when making this deduction so that the landlord has no grounds to serve a 10 Day Notice in that event.

I specifically note that although the original arbitrator was prepared to consider whether this tenancy was frustrated by the deaths of the original parties, I found it was unnecessary for me to consider. The estates of both the deceased tenant and deceased landlord have continued to carry on this tenancy through the process of attempting to end the tenancy and by PW paying the monthly rent. Further, there is no evidence the executor has served the landlord, or landlord's estate, a notice to end the tenancy.

For this reason, I declined to make a finding on frustration of the tenancy as I did not find it an issue in this dispute.

Conclusion

The 1 Month Notice and the 2 Month Notice are cancelled, and are of no force or effect. The tenancy continues until otherwise ended under the MHPTA.

The tenant is granted recovery of one filing fee of \$100.

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: August 11, 2023

Residential Tenancy Branch