

## **DECISION**

### **Introduction**

This hearing dealt with the tenant's Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* (the "Act") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) under sections 39 and 48 of the Act
- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) under section 40 of the Act
- an order to suspend or set conditions on the landlord's right to enter the manufactured home site under section 63 of the Act
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 55 of the Act
- authorization to recover the filing fee for this application from the landlord under section 65 of the Act

Tenant C.C., Tenant S.T. attended the hearing for the tenant.

No one attended the hearing for the landlord.

### **Service of Notice of Dispute Resolution Proceeding and Evidence (Proceeding Package)**

I find that Landlord N.S. was served on September 8, 2023, by registered mail in accordance with section 82(1) of the Act, the fifth day after the registered mailing. The tenant provided a copy of the Notice of Dispute Resolution Proof of Service in RTB form #55 which contained the tracking number to confirm this service.

#### **1. Preliminary Matters- Severance**

The tenant's application included unrelated claim(s) in addition to the tenant's application to dispute the landlord's Notices.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy. I find that the additional claim(s) are not related to whether the tenancy continues.

Therefore, all the tenant's claims except for the application to dispute the landlord's Notices and reimbursement of the filing fee are dismissed with leave to reapply.

The tenant may reapply for these claims subject to any applicable limits set out in the Act, should the tenancy continue.

## **2. Preliminary Matters- Landlord Failed to Attend and Onus on Landlord**

Section 55 of the *Act* requires that when a tenant applies for Dispute Resolution seeking to cancel a notice(s) to end tenancy issued by a landlord, I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice(s) to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually, the onus to prove the case is on the person making the claim.

However, in situations such as in the current matter, where the tenant has applied to cancel a landlord's 10-Day Notice and a landlord's One Month Notice, I explained that the onus to prove the reasons for ending the tenancy transfers to the landlord as the landlord issued the Notice and seeks to end the tenancy.

As the landlord did not attend during the 30 minutes of the hearing and as I have found the landlord was served with the Notice of Hearing and Application for Dispute Resolution, I find the landlord submitted no evidence admissible under the *Act* and Rules of Procedure.

As no evidence was submitted on behalf of the landlord, I find the landlord has failed to meet the onus to prove the reasons to end the tenancy.

The tenant submitted copies of a 10 Day Notice dated September 2, 2023, and two One Month Notices which appear to be issued on the same date of September 2, 2023, although

the identical (in content) one is dated October 2, 2023. The tenant's application was filed September 3, 2023, and copies of all three notices were submitted.

I therefore order that the tenant's application to cancel all the Notice(s) to End Tenancy is granted.

**Is the tenant entitled to recover the filing fee for this application from the landlord?**

As the tenant was successful in their application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application under section 65 of the Act.

**Conclusion**

The tenant's application is granted for cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) and the One Month Notices dated September 2, 2023, and October 2, 2023. The three Notices are of no force or effect.

This tenancy continues until it is ended in accordance with the Act.

The tenant's application for an order to suspend or set conditions on the landlord's right to enter the manufactured home site under section 63 of the Act is dismissed, with leave to reapply.

The tenant's application for an order requiring the landlord to comply with the Act, regulation or tenancy agreement under section 55 of the Act is dismissed, with leave to reapply.

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: November 6, 2023

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Residential Tenancy Branch