

DECISION

Introduction

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

- an Order of Possession based on a One Month Notice to End Tenancy for Cause (One Month Notice) under sections 40 and 48 of the Act
- authorization to recover the filing fee for this application from the Tenant under section 65 of the Act

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

- cancellation of the Landlord's One Month Notice to End Tenancy for Cause (One Month Notice) under section 40 of the Act

The Co-Owner, Tenant Affairs Manager and Agent M.M., the Onsite Manager and Agent D.G., and the Operations Manager and Agent J.W. attended the hearing for the Landlord. The Landlord is a corporate entity.

Tenant N.T., Tenant's Friend and Agent J.P. attended the hearing for the Tenant.

Service of the Notice of Dispute Resolution Proceeding and Evidence

The Tenant confirmed they received the Landlord's Notice of Dispute Resolution Proceeding and Evidence.

Service of the Tenant's Notice of Dispute Resolution Proceeding and Evidence

The Landlord confirmed they received the Tenant's Notice of Dispute Resolution Proceeding and Evidence.

Issues to be Decided

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

Background and Evidence

I have reviewed all evidence, including the testimony of the parties, but will refer only to what I find relevant for my decision.

The written tenancy agreement was provided showing that this tenancy began on September 1, 2018. At the time of the hearing, the monthly rent was \$636.25, and due on the first day of the month. The parties agreed the tenancy is ongoing. The parties agree that the Landlord did not collect a security deposit. The parties agree that the Tenant does not own the manufactured home site, also known as the pad. The parties agree that the Tenant owns the manufactured home, also known as the trailer. The parties agreed that there was a Previous Hearing where a Decision dated February 29, 2024, was provided to the Tenant and the Landlord.

The Landlord declared that the Tenant did not comply with the arbitrator's February 29, 2024, Decision from the Previous Hearing. The Landlord requested for an Order of Possession.

The Landlord stated that they served the Tenant with the One Month Notice on March 15, 2024, by registered mail. A copy of the Canada Post Tracking Receipt containing the Tracking Number, and a copy of the One Month Notice was provided by the Landlord. On examination, the effective date of the One Month Notice is April 30, 2024, the Landlord signed the One Month Notice on March 14, 2024, and the reason selected on the One Month Notice is breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord testified that under the park rules and section 18 of tenancy agreement, tenants at the mobile home park may only have two vehicles and may only park their vehicles in the paved section of the pad, the gravel surface driveway, the mobile home park parking lot, or roadside parking off the property. The Landlord submitted a copy of the 2017 park rules, and a copy of the written tenancy agreement. The Landlord affirmed that the most current copy of the park rules is from 2022 and that there are no substantial changes to the park rules.

The Landlord claimed that the Tenant has breached the park rules and the written tenancy agreement by parking a third vehicle owned by the Tenant on the grass area of the Tenant's pad.

The Landlord testified that they have sent the Tenant a warning letter on March 6, 2024, to remind the Tenant to comply with the park rules and the written tenancy agreement.

The Landlord submitted fifteen pictures of the Tenant's vehicle parked on the grass area of the Tenant's pad. The Landlord testified that the pictures were taken beginning sometime on April 10, 2024. The Landlord recited 13 instances between March and

June of 2024 where the Tenant violated the parking rules under the park rules and the written tenancy agreement.

The Tenant's Agent J.P. testified that the Tenant parked their vehicle in contravention of the park rules and the written tenancy agreement. The Tenant stated that the dates the Landlord provided for instances where the Tenant did not comply with the parking rules were correct. The Tenant affirmed that they could not remove their third vehicle due to the weather conditions and that they did not have a reasonable amount of time to comply.

Analysis

Should the Landlord's One Month Notice be cancelled? If not, is the Landlord entitled to an Order of Possession?

Section 40 of the Act states that a landlord may issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 40(4) of the Act states that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

Section 40(5) of the Act states that a tenant who has received a notice under section 40 and does not make an application to for dispute resolution within ten days, 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.

In this case, based on the Canada Post Tracking Number, I find the Landlord served the One Month Notice on March 15, 2024, and I deem the Tenant received the One Month Notice on March 20, 2024. On review of the applications filing dates, I find that the Tenant filed their application to dispute the One Month Notice on April 2, 2024, which is not in the required time as permitted under the Act.

Consequently, I find that the Tenant is conclusively presumed to have accepted the end of the tenancy based on the One Month Notice dated March 14, 2024.

In the alternative, even if the Tenant had filed their application to dispute the Landlord's One Month Notice within the required time and conclusive presumption did not apply, I find that based on the Tenant's own admission, they have not complied with the Arbitrator's February 29, 2024, Decision from the Previous Hearing, and that the Tenant has continued to park on the grass area of the pad in contravention of the park rules, and in contravention of the written tenancy agreement.

For instance, two passages from the February 29, 2024, Decision reads:

The Tenant testified that they have sold two vehicles and have three vehicles in total. I caution the Tenant and direct them to abide by agreed upon Park Rules

for parking. I find it a contravention of Park Rules for the Tenant to park the vehicles on the grass in front of or beside the manufactured home site given they have a driveway and a garage. As such, all three vehicles are to be parked in a designated parking area, including the driveway, garage, the manufactured park parking lots, or on the street, and not on the grass of the manufactured home site.

The Tenant is cautioned that they are to comply and that the Landlord may make subsequent applications and could form cause for ending the tenancy under sections 7 and 40 of the Act.

In this alternative scenario, I assign weight to the written tenancy agreement, and the park rules submitted by the Landlord. I find that the written tenancy agreement and the park rules contain clear guidance on the appropriate areas a tenant at the mobile home park would be allowed to park their vehicle.

Notices served under section 40 of the Act must comply with section 45 of the Act for form and content. I have examined the One Month Notice and I find that it complies with section 45 of the Act.

I uphold the Landlord's One Month Notice dated March 14, 2024.

The Tenant's request to cancel the One Month Notice is dismissed, without leave to reapply.

Given the length of the tenancy, I find that the Landlord is entitled to an Order of Possession effective August 31, 2024 after service of the Order.

Is the Landlord entitled to recover the filing fee for this application from the Tenant?

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

Conclusion

The Tenant's cross application to cancel the Landlord's One Month Notice is dismissed, without leave to reapply.

I uphold the Landlord's One Month Notice.

The Landlord's application for an Order of Possession is granted.

The Landlord is granted an Order of Possession effective August 31, 2024, after service of the Order. Should the Tenant(s) or anyone on the premises fail to comply with this

Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord's application to recovery the filing fee is granted. I grant the Landlord a Monetary Order in the amount of \$100.00.

The Landlord is provided with this Order in the above terms and the Tenant(s) must be served with **this Order** as soon as possible. Should the Tenant(s) 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 Act.

Dated: June 11, 2024

Residential Tenancy Branch