



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW DECISION

Dispute Codes CNR, OPR, MNR, MDSD & FF

This is a review hearing of a decision and order of an arbitrator granting the tenant leave for review dated March 27, 2018.

The original hearing was held on March 15, 2018 and the decision was rendered on March 23, 2018. During the original hearing the arbitrator dismissed the Tenant's application for more time to make the application and for an order to cancel a 10 day Notice to End Tenancy. The landlord was given an Order of Possession. The landlord's application for a monetary order for non payment of rent was dismissed as the rent had been paid. The landlord was given a monetary order for the cost of the filing fee.

On March 27, 2018 the Tenant applied for a review consideration of the decision dated March 23, 2018. The basis of the application for review consideration was that the Tenant has new and relevant evidence that was not available at the time of the original hearing.

The arbitrator who heard the Tenant's application for review consideration made the following order:

- The tenant was not entitled to a review hearing on the Tenant's own application and the application for review was dismissed. The arbitrator in the March 15, 2018 hearing determined the tenant failed to prove she served the landlord with her Application. The evidence the tenant was now attempting to introduce to prove service was not new and relevant evidence.
- The tenant was entitled to a review hearing on the landlord's application. The tenant's witness was unable to call into the conference call hearing because of technical difficulties. The evidence of the witness would confirm that the Notice to End Tenancy was not received by the Tenant until January 15, 2018 and that she paid the arrears within the 5 days that would void the Notice.

Issue(s) to be Decided:

The issue to be decided is whether the tenant is entitled to an order setting aside the original decision of the arbitrator dated March 23, 2018?

Background and Evidence:

The tenant moved into the manufactured home park in 2006. The most recent tenancy agreement provided that the tenancy would start on January 1, 2014, ends on June 30, 2014 and become month to month after that. The rent the time the Notice to End Tenancy was served was \$223 per month payable in advance on the first day of each month.

The tenant failed to pay the rent when due on January 1, 2018. She inadvertently thought she had previously paid it. The landlord served a 10 day Notice to End Tenancy in the approved form by posting on January 3, 2018. The tenant was in a different town attending to her mother who was very ill. She testified she returned on January 15, 2018 and that was the first time she was aware of the Notice to End Tenancy. The day before the tenant sent money to cover the rent for February and March to the landlord as she commonly pays in advance.

On January 15, 2018 she talked to the landlord and told him that the part of the rent paid the previous day should be applied to the rent for January 2018. The landlord agreed but told her orally that he still intended to proceed with the eviction process. The landlord gave the tenant receipts for February and March "for use and occupation only."

Analysis:

This hearing is moot. The parties advised me that the arbitrator in the March 15, 2018 hearing advised the parties that he would not be finding in favor of the tenant. The parties subsequently entered into a new tenancy agreement. The rent for the new tenancy agreement provided that the tenant would pay rent of \$460 per month. The landlord testified this is below market value but it is a fair rent.

The landlord raised the question of why this hearing was going to proceed? The tenant stated she wishes the hearing to proceed. The tenant takes the position that if she is successful in this application, her agreement with landlord on March 15, 2018 would not be valid. I advised the party that the validity of the new agreement was not before me in this hearing and that the parties should get legal assistance. As a courtesy to the parties I advised them of the relevant provisions under section 36 of the Manufactured Home Park Tenancy Act which is set out below:

Amount of rent increase

36 (1) A landlord may impose a rent increase only up to the amount

(a) calculated in accordance with the regulations,

(b) ordered by the director on an application under subsection (3),
or

(c) agreed to by the tenant in writing.

(2) A tenant may not make an application for dispute resolution to dispute a rent increase that complies with this Part.

(3) In the circumstances prescribed in the regulations, a landlord may request the director's approval of a rent increase in an amount that is greater than the amount calculated under the regulations referred to in subsection (1) (a) by making an application for dispute resolution.

(4) [Repealed 2006-35-11.]

(5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

Discussion:

The Manufactured Home Park Tenancy Act provides that an Order of Possession can be issued to a landlord in a number of situations including:

- Where the Tenant's application for dispute resolution to dispute a landlord's notice to end a tenancy tenant's application is dismissed provided the landlord has used the correct form
- Where the landlord files for an Application for Dispute Resolution seeks an Order of Possession. .

Section 48 of the Act provides as follows:

48 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director **must grant (my emphasis)** to the landlord an order of possession of the manufactured home site if

(a) the landlord's notice to end tenancy complies with section 45 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The decision of the arbitrator in the original March 15, 2018 hearing dismissing the tenant's application and granting an Order of Possession is still valid. The Tenant's application for review of the decision relating to her application was dismissed. The original arbitrator determined the tenant failed to prove service and that the landlord did not reinstate the tenancy when he accepted the rent. As the tenant was not given leave for a review hearing on her application I do not have jurisdiction to set aside or vary that decision in any way.

In my view the Act requires that I grant the landlord an Order of Possession as section 48 states the director "must grant to the landlord a order of possession" if the arbitrator dismissed the tenant's application and the notice to end tenancy complied with section 45. However, after the original hearing subsequent events have changed the situations as the parties entered into a new tenancy agreement thereby reinstating the tenancy pursuant to that new tenancy agreement. I declined to issue the Order of Possession. Had the parties not entered into this new agreement I would have been compelled to reinstate the Order of Possession as the tenant was not granted leave for review on her application.

Given my determination set out above I determined it is not necessary or appropriate to consider the tenant's application for review of the landlord's application as even if the tenant's application is successful the law would have required that I issue an Order of Possession.

Decision and Order:

I dismissed the Tenant's application for review of the decision relating to the landlord's application as the result would be same. The landlord would be entitled to an Order of Possession even if the landlord's application was dismissed. .

However, I declined to reinstate the Order of Possession as the parties entered into a new tenancy agreement and it would be inappropriate to reinstate the Order of Possession where the parties have entered into a new tenancy agreement.

This decision is final and binding on the parties.

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: June 14, 2018

Residential Tenancy Branch