



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VISTA VILLAGE TRAILER PARK LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR OPC FFL

Introduction

This hearing dealt with an Application for Dispute Resolution seeking remedy under the *Manufactured Home Park Tenancy Act* (Act) by the landlord for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated February 3, 2020 (10 Day Notice), for an order of possession based on an undisputed 1 Month Notice to End Tenancy for Cause (1 Month Notice) and to recover the cost of the filing fee.

An agent for the landlord, LAW (agent), an on-site manager for the landlord, MB (manager), the tenant and the son of the tenant (son) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the parties were given the opportunity to provide their evidence orally. A summary of the testimony and evidence presented is provided below and includes only that which is relevant to the matters before me. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As both parties confirmed that they had received and reviewed the documentary evidence from the other party, I find there was no service issues.

Preliminary and Procedural Matters

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance

Enforcement Unit for the purpose of an investigation under the Act. Neither party had any questions about my direction pursuant to RTB Rule 6.11.

In addition, the agent confirmed the landlord's email address and the son stated that his mother did not have an email address. As a result, the decision will be emailed to the landlord and sent by regular mail to the tenant.

Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- If yes, is the landlord also entitled to the recovery of the filing fee under the Act?

Background and Evidence

There was no tenancy agreement submitted in evidence; however the parties agreed that the tenancy began in 1983 and that the month rent was currently \$290.00 per month and due on the first day of each month.

The agent confirmed service of the 10 Day Notice by stating that it was served on the tenant via registered mail on February 3, 2020 and was signed for and accepted by the tenant as of February 5, 2020. Documentary evidence from the landlord supports the testimony of the agent and was printed from the Canada Post website. The 10 Day Notice listed \$630.00 owing, which the landlord stated was comprised as follows:

1. Unpaid January 2020 rent of \$290.00
2. Late fee of \$25.00 for January 2020
3. Unpaid February 2020 rent of \$290.00
4. Late fee of \$25.00 for February 2020

There is no dispute that the tenant did not file an application to dispute the 10 Day Notice. The son agreed with the agent that they met with the manager on February 26, 2020 to drop off 12 cheques including January and February 2020 cheques, which was after the effective vacancy date listed on the 10 Day Notice of February 18, 2020.

The son stated that his mother has dementia and sometimes hides the mail. The son also testified that he has lived with his mother for the past 2 years. The son requested that the tenancy continue as the tenant has not been late paying rent since 1983 until January 2020.

The agent stated that they were willing to agree to an order of possession for December 31, 2021 at 1:00 p.m. to give the tenant and their son more time to find a new place to move their manufactured home to. The agent stated that they still expect money for use and occupancy to be paid for December 2020, however. The agent confirmed that receipts for use and occupancy have been issued to the tenant and that the landlord has not reinstated the tenancy at any time since the late payment of rent. The agent also stated that the landlord did not apply for an order of possession early due to COVID restrictions that were put in place.

Although a 1 Month Notice was also part of this application, it was not discussed further due to the reason I will indicate below.

Analysis

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

Order of Possession – Section 39(5) of the Act applies and states:

39(5) If a tenant **who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4)**, the tenant

(a) **is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and**

(b) **must vacate the manufactured home site to which the notice relates by that date.**

[emphasis added]

Given the evidence before me, I find that the tenant failed to pay the site rent for the months of January 2020 and February 2020 and did not pay either months' rent within 5 days of signing for the 10 Day Notice on February 5, 2020. I also find that the tenant has not filed an application to dispute the 10 Day Notice. Therefore, I find the tenant is conclusively presumed pursuant to section 39(5) of the Act, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was February 18, 2020. I also find the landlord has not reinstated the tenancy since that date.

Accordingly, I grant the landlord an order of possession **effective December 31, 2021 at 1:00 p.m.** I have used this date as the agent agreed to a later date for the order of possession to assist the tenant, although that is not required under the Act. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

Given the above, I find it is not necessary to consider the 1 Month Notice as the tenancy ended by way of the undisputed 10 Day Notice.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee and grant the landlord a monetary order in that amount pursuant to section 60 and 65 of the Act. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord's application is successful. The tenancy ended February 18, 2020.

The landlord has been granted an order of possession effective December 31, 2021 at 1:00 p.m. The landlord has been granted a monetary order under sections 60 and 65 of the Act in the amount of \$100.00.

This decision will be sent by email to the landlord and by regular mail to the tenant. The orders will be sent to the landlord only by email, which the landlord must serve on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 19, 2021

Residential Tenancy Branch