



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPC, FFL

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution filed under the *Manufactured Home Park Tenancy Act* (the "Act") made on October 18, 2022. The Landlord applied to enforce a One Month Notice to End Tenancy for Cause, (the "Notice") dated August 31, 2022, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord and both the Tenants attended the hearing were affirmed to be truthful in their testimony. The Landlord and Tenants were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue to be Decided

- Is the Landlord entitled to an order of possession, pursuant to section 40 of the *Act*?
- Is the Landlord entitled to the recovery of the filing fee for this application?

Background and Evidence

While I have considered all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

Landlord testified that they served the Notice to the Tenants on August 31, 2022, by personal service. The Notice indicated an end of tenancy date of September 30, 2022. The Landlord submitted a copy of the Notice into documentary evidence.

The Tenant agreed that they received the Notice, that they had not disputed the Notice and that they had not moved out in accordance with the Notice.

Analysis

Based on the testimony, the documentary evidence before me, and on a balance of probabilities, I find as follows:

Section 40 of the *Act* requires that upon receipt of a Notice to End Tenancy for Cause a tenant must, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do this, the tenant is conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice under sections 40(4) and 40(5).

Landlord's notice: cause

40 (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not 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 by that date***

I accept the agreed-upon testimony in this case, that the Tenants received the Notice to end the tenancy on August 31, 2022. Pursuant to section 40(4) the *Act*, the Tenants had 10 days to dispute the Notice. Consequently, the Tenant had until September 10, 2022, to dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

In this case, I find that the Tenants did not dispute the Notice to End Tenancy and that the time for doing so has expired. Therefore, pursuant to section 40(5) I find that the Tenants are conclusively presumed to have accepted the Notice and that the tenancy would end in accordance with that Notice.

Section 48(2b) of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

48 (2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

The Landlord is therefore entitled to an Order of Possession pursuant to section 48(2) of the *Act*.

During the hearing, both parties expressed a desire to enter into a mutual agreement for the end the tenancy date.

Section 63 of the *Act* allows for the parties to consider a settlement to their dispute during the hearing, and that any settlement agreement reached during the hearing may be recorded in the form of a decision and an order. In accordance with this, an opportunity for a settlement discussion was presented, and the parties came to an agreement on a settlement that would resolve their dispute.

During the hearing, the parties agreed to the following settlement:

1. The Landlord and the Tenants agreed to an end of tenancy date of April 30, 2023.
2. The Tenants agreed to move out of the property no later than April 30, 2023.
3. The parties agreed to abide by the terms of the tenancy agreement and their respective requirements under the *Act* until this tenancy has ended in accordance with this agreement.

The above terms of the settlement agreement were reviewed with all parties at the end of the hearing and all parties confirmed that they were entering into the settlement agreement on a voluntary basis. They also confirmed understanding of the terms of the settlement agreement as full and final settlement of this matter.

Therefore, I grant the Landlord an Order of Possession effective not later than 1:00 p.m. on April 30, 2023. Should the Tenants fail to comply with this Order, this order may be filed in the Supreme Court and enforced as an order of that Court.

The Tenants are cautioned that the costs of such enforcement are recoverable from the Tenant.

Additionally, section 72 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application. I grant a monetary order to the Landlord in the amount of \$100.00 in the recovery of their filing fee for these proceedings.

Conclusion

I find that the Tenants did not dispute the Notice and are therefore presumed under the law to have accepted that the tenancy ended on the effective date of the Notice.

I grant an **Order of Possession** to the Landlord effective not later than 1:00 p.m. on **April 30, 2023**. The Landlord is provided with this Order in the above terms, and the Tenants must be served with this Order as soon as possible. Should the Tenants 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.

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 Tenants must be served with this Order as soon as possible. Should the Tenants 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 *Residential Tenancy Act*.

Dated: February 27, 2023

Residential Tenancy Branch