



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding CRYSTAL RIVER COURT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

Landlord: **OPC, FFL**

Tenant: **CNR, CNC-MT, MNDCT, DRI, OLC, FFT**

Introduction

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Manufactured Home Park Tenancy Act (the “Act”).

The landlord applied for:

- An order of possession for cause pursuant to sections 40 and 48; and
- Authorization to recover the filing fee from the other party pursuant to section 65.

The tenant applied for:

- An order to cancel a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities pursuant to sections 39;
- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 40;
- Leave to have the application heard after the time to dispute the notice to end tenancy has passed pursuant to 59;
- A monetary order for damages or compensation pursuant section 60;
- An order to dispute a rent increase above the amount allowable under the Act pursuant to section 36;
- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 55; and
- Authorization to recover the filing fee from the other party pursuant to section 65.

The tenant did not attend the hearing but was represented by an agent WB in accordance with rule 6.7 of the Residential Tenancy Branch rules of procedure. The landlord was represented by a representative, JN. The parties were informed at the

start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules") and that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

Each party was administered an oath to tell the truth and they both confirmed that they were not recording the hearing.

The landlord acknowledged receipt of the tenant's Notice of Dispute Resolution Proceedings package. The tenant's agent doesn't know whether the tenant received the landlord's Notice of Dispute Resolution Proceedings package however the landlord testified that he sent it to the tenant at her place of residence via registered mail on December 9, 2022. The tracking number is recorded on the cover page of this decision. I deem the tenant served with the landlord's Notice of Dispute Resolution Proceedings package on December 14, 2022, the fifth day after it was sent via registered mail in accordance with sections 82 and 83 of the Act.

Preliminary Issue

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply. Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. At the commencement of the hearing, I determined that the issue of whether to uphold or cancel the landlord's notice to end tenancy was the primary issue before me and that the other issues listed on the tenant's application were not related and would be dismissed with leave to reapply.

The parties agreed that the tenant sought an order to cancel a notice to end tenancy for unpaid rent or utilities and that the landlord never served such a notice upon the tenant. Consequently, this portion of the tenant's application was dismissed without leave to reapply.

Issue(s) to be Decided

Did the tenant file her application to dispute the landlord's notice to end tenancy in time to comply with the Act?

Background and Evidence

The landlord testified that he served the tenant with a copy of the 1 Month Notice to End Tenancy for Cause via registered mail on October 27, 2022. The tracking number is recorded on the cover page of this decision. The landlord's agent acknowledges the tenant received it in late October or early November 2022.

Both parties provided a copy of the notice to end tenancy dated October 27th. It provides an effective date of November 30, 2022.

The tenant's agent testified that he attended a hearing on behalf of the tenant on January 26, 2023 and the tenant's application was dismissed with leave to reapply because the arbitrator was not satisfied the landlord was served with the Notice of Dispute Resolution Proceedings.

The tenant's agent testified that he understood that the issues before the arbitrator on the January 26th hearing were to dispute a rent increase; for an order that the landlord comply with the Act; and to recover the filing fee. In addition, the agent understood that the issue of disputing the landlord's 1 Month Notice to End Tenancy for Cause was also dismissed with leave to reapply although the tenant never filed an amendment seeking that relief.

I reviewed the order dismissing the tenant's application issued by the arbitrator on January 26th and I note that only the three issues applied for by the tenant in the original application were dismissed with leave to reapply. Further, the arbitrator states that leave to reapply does not extend any deadlines established pursuant the Act. In the Residential Tenancy Branch record, there is no indication the tenant ever filed an amendment to the application heard on January 26th seeking to dispute the landlord's 1 Month Notice to End Tenancy for Cause.

In the application before me, filed on February 6, 2023, the tenant seeks to dispute the landlord's 1 Month Notice to End Tenancy for Cause and more time to file the application. When describing why she is filing after the dispute period, the tenant responded: *"we had a hearing on Jan 26/23, it was dismissed but, allowed to reapply"*. *(reproduced as written)*

The tenant's agent argues that since he understood the previous arbitrator granted leave to reapply, the tenant retained the ability to dispute the notice to end tenancy.

Analysis

I deem the tenant effectively served with the landlord's 1 Month Notice to End Tenancy for Cause on November 1, 2022, the fifth day after it was sent via registered mail pursuant to sections 81 and 83 of the Act. Pursuant to section 40(4), the tenant had 10 days (until November 11, 2022) to dispute the notice and if she did not do so within 10 days, she is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the manufactured home site by that date.

Despite what the tenant's agent understood from the hearing on January 23, 2023, the tenant never applied to dispute the landlord's notice to end tenancy for cause by amending the original application. Moreover, when the arbitrator dismissed the application with leave to reapply, the leave to reapply granted by the arbitrator specifically noted that such leave does not extend any deadlines established pursuant the Act.

The tenant was always required to file her application to dispute the landlord's notice to end tenancy by November 10th, something she didn't do until February 6, 2023 when she filed the application coming on before me today. While section 59(1) allows me to extend the time to file an application to dispute a notice to end tenancy in exceptional circumstances; section 59(3) specifically prohibits me from extending the time limit to make an application for dispute resolution to dispute a notice to end a tenancy **beyond the effective date of the notice.**

Since I've deemed the date the tenant was served with the landlord's notice was November 1, 2022, the earliest effective (move-out) date would be December 31, 2022 since rent is due on the first day of the month. As section 59(3) forbids me from extending the time to make the application to dispute the notice to end tenancy beyond December 31, 2022, I find the tenant did not make the application within the 10 day time frame contemplated under section 40. Pursuant to section 40(5) she is conclusively presumed to have accepted the tenancy ends on the effective date of the notice and must vacate the manufactured home site.

The landlord testified that the tenant has paid for use and occupancy of the site until the end of April, 2023. As such, the landlord is entitled to an Order of Possession effective at 1:00 p.m. on April 30, 2023.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

As the tenant's application was not successful, the tenant is not entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on April 30, 2023**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I award the landlord a monetary order in the amount of \$100.00.

The tenant's applications seeking to cancel the notice to end tenancy for unpaid rent and to recover the filing fee are dismissed without leave to reapply.

As this tenancy is ending, the tenant's application seeking an order that the landlord comply with the Act is dismissed without leave to reapply.

The tenant's application seeking a monetary order and to dispute a rent increase are 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 *Residential Tenancy Act*.

Dated: April 14, 2023

Residential Tenancy Branch