



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes **CNR DRI RR AAT PSF LRE FFT**

Introduction

This hearing was convened as a result of the Tenant's application for dispute resolution ("Application") under the *Manufactured Home Park Tenancy Act* (the "Act"). The Tenant seeks:

- an order cancelling a Ten Day Notice to End Tenancy dated November 6, 2022 pursuant to section 39;
- an order regarding a disputed rent increase pursuant to section 36;
- an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord pursuant to section 58;
- an order for the Landlord to allow the Tenant or the Tenant's guests to access the home site pursuant to section 24;
- an order for the Landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 21;
- an order to suspend or set conditions on the Landlord's right to enter the home site pursuant to section 63; and
- authorization to recover the filing fee for the Application from the Landlord pursuant to section 65.

The Landlord did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 10:21 am, in order to enable the Landlord to call into this teleconference hearing. The Tenant attended the hearing and he was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes were provided in the Notice of Dispute Resolution Proceeding for the Application ("NDRP"). I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference.

The Tenant stated he served the NDRP, two amendments to the NDRP (collectively the “Amendments”) both dated November 24, 2022 and his evidence on the Landlord by registered mail. The Tenant provided the Canada Post receipt and tracking number for service of the NDRP, Amendments and Tenant’s evidence to corroborate his testimony. Based on the undisputed testimony of, and the evidence submitted by, the Tenant, I find the NDRP, Amendments and Tenant’s evidence was served on the Landlord in accordance with the provisions of sections 88 and 89 of the Act.

Preliminary Matter – Severance and Dismissal of Claims in Application

The Application included claims for (i) an order regarding a disputed rent increase; (ii) an order to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlord; (iii) an order for the Landlord to allow the Tenant or the Tenant’s guests to access the home site; (iv) an order for the Landlord to provide services or facilities required by the tenancy agreement or law; and (v) an order to suspend or set conditions on the Landlord’s right to enter the home site pursuant to section 63 (collectively the “Tenant’s Other Claims”).

Rule 2.3 of the Rules states:

2.3 Related issues

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the Residential Tenancy Branch (“RTB”) are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

At the outset of the hearing, I advised the Tenant the primary issues in the Application was to whether the Tenant was entitled to (i) cancellation of the 10 Day Notice and (ii) entitled to recover the filing fee for the Application from the Landlord. As such, I severed and dismissed, the Tenant’s Other Claims. Whether I dismiss the Tenant’s Other Claims with, or without leave to reapply, will depend upon whether I cancel the 10 Day Notice.

Preliminary Matter – Effect of Non-Attendance of Landlord

Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

Even though the Tenant made the Application to seek cancelation of the 10 Day Notice, the Landlord must nevertheless meet the burden of proving that, on a balance of probabilities, it is more likely than not that the 10 Day Notice is valid.

Rules 7.1, 7.3 and 7.4 of the RoP state:

7.1 Commencement of the dispute resolution hearing

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of the party, or dismiss the application, with or without leave to re-apply.

7.4 Evidence must be presented

Evidence must be presented by the party who submitted it, or by the party’s agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Landlord did not attend the hearing before it ended at 10:21 am, being more than 10 minutes after its commencement, I find the Landlord has not met the burden of proof that it is more likely than not that the 10 Day Notice is valid. As such, I order the 10 Day Notice to be cancelled. The tenancy will continue until it is legally ended in accordance with the Act.

In addition, section 45 of the Act states:

- 45 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the manufactured home site,
 - (c) state the effective date of the notice,
 - (d) except for a notice under section 38 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
 - (e) *when given by a landlord, be in the approved form.*

[emphasis in italics added]

I have reviewed the 10 Day Notice and find that it was made in the form of a short letter and not on Form RTB-30 when it was given to the Tenant. As such, the 10 Day Notice did not comply with section 45 of the Act. Based on the foregoing, the 10 Day Notice was not effective when it was served on the Tenant.

As the 10 Day Notice has been cancelled, the Tenant has been successful in the Application. As such, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 65(1) of the Act. Pursuant to section 65(2) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlord when this deduction is made. The Landlord may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

I dismiss the Tenant's Other Claims with leave to reapply. The Tenant has the option of making a new application for dispute resolution to make one or more of the Tenant's Other Claims.

Conclusion

The 10 Day Notice is cancelled. The tenancy will continue until it is legally ended in accordance with the Act.

The Tenant is ordered to deduct \$100.00 from next month's rent in satisfaction of his monetary award for recovery of the filing fee for the Application.

The Tenant's Other Claims 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 *Manufactured Home Park Tenancy Act*.

Dated: April 13, 2023

Residential Tenancy Branch