



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession and a Monetary Order for unpaid rent. The tenant is deceased and the tenant's two sons appeared at the hearing and were prepared to represent their father's estate and resolve issues pertaining to the rental site. Both parties were provided the opportunity to be heard, to respond to the submissions of the other party and to ask questions. Both parties consented to amending the landlord's application to identify the tenant as the estate rather than the names of the tenant's sons.

Issues(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

I heard undisputed evidence as follows. The tenancy commenced in January 2009 and under the terms of the tenancy agreement rent of \$200.00 was due on the 1st day of every month. At the commencement of the tenancy the tenant brought a manufactured home onto the rented site. The tenant died in January 2010. The tenant's son and another person paid rent to the landlord for the months of February through April 2010. The landlord did not receive any rent for the months of June and July 2010 and on July 22, 2010 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent

indicating \$400.00 in rent was outstanding as of July 1, 2010. The 10 Day Notice was served upon the estate by registered mail sent to the tenant's son's residence. The 10 Day Notice was not disputed and the rent was not paid. As at the date of this hearing I heard that nobody is occupying the manufactured home but the manufactured home remains on the rental site.

The landlord stated that as of today's date she has lost rent for a total of four months including September 2010.

The tenant's sons indicated that they are agreeable to the landlord regaining possession of the site and agree the manufactured home should be removed from the site; however, the tenant's sons questioned whether they have the authority to dispose of the manufactured home. The tenant's sons were also uncertain as to whether they are the executors of their father's estate as their father died without a will. The sons asserted that they have attempted to determine ownership of the manufactured home and have discovered that it is registered to another individual. I refused to answer questions related to estate law and encouraged the tenant's sons to seek independent legal advice including guidance from the office of the Public Guardian and Trustee.

Provided as documentary evidence for this hearing is a copy of the 10 Day Notice and registered mail receipt as proof of service.

Analysis

Under section 1 of the Act, the definition of "tenant" includes the estate of a deceased tenant. Under the Act a tenant must pay rent when due in accordance with the terms of the tenancy agreement. In this case I am satisfied that the estate of the deceased tenant was required to pay rent of \$200.00 on the 1st day of every month until such time the tenancy ended. Section 37 provides for ways a tenancy ends.

How a tenancy ends

37 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 38 *[tenant's notice]*;
- (ii) section 39 [landlord's notice: non-payment of rent];
- (iii) section 40 *[landlord's notice: cause]*;
- (iv) section 41 *[landlord's notice: end of employment]*;
- (v) section 42 *[landlord's notice: landlord's use of property]*;
- (vi) section 43 *[tenant may end tenancy early]*;

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the manufactured home site on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates the manufactured home site or abandons a manufactured home on the site;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

[my emphasis added]

If the rental site has been abandoned the landlord does not require an Order of Possession as possession is returned to the landlord when the site is abandoned. Abandonment of the rental site may be applicable in this case; however, I was not provided sufficient evidence with respect to abandonment of the rental site. Since the landlord's request for an Order of Possession pertains to unpaid rent I have considered whether the landlord is entitled to an Order of Possession for unpaid rent.

I was provided sufficient evidence that the landlord issued a 10 Day Notice for unpaid rent on July 22, 2010 and mailed it to the estate on July 22, 2010. I deem the 10 Day Notice sufficiently served upon the estate five days later on July 27, 2010. In the absence of payment of the outstanding rent or a dispute of the Notice I find the tenancy ended 10 days later on August 6, 2010.

As the tenancy has ended and the manufactured home remains on the site I find the landlord entitled to an Order of Possession. I provide the landlord with an Order of Possession effective two days after service upon the estate.

I find the landlord entitled to recover unpaid rent for the months of June, July and August 2010 in the amount of \$600.00. I also award the landlord loss of rent for the month of September 2010 and recovery of the filing fee. The landlord is provided a Monetary Order for the amount of \$850.00 to serve upon the estate.

As indicated above, where a tenant abandons a manufactured home on the rental site the tenancy ends. In such cases, the manufactured home is considered abandoned property. Sections 34 through 40 of the Manufactured Home Park Regulations provide requirements with respect to handling abandoned property. The parties may obtain more information concerning the abandoned property requirements by contacting the Residential Tenancy Branch by telephone or email or accessing the branch website at www.rto.gov.bc.ca.

Conclusion

The tenancy has ended and the landlord has been provided an Order of Possession effective two days after service upon the estate. The landlord has been provided a Monetary Order in the amount of \$850.00 for unpaid rent and loss of rent for the months of June through September 2010 and the filing fee.

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: September 28, 2010.

Dispute Resolution Officer