



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPC

Introduction

This matter dealt with an application by the Landlord for an Order of Possession. The Landlord said he served the Tenant with a copy of the Application and Notice of Hearing (the "hearing package") on December 1, 2010 by posting a copy of it on the Tenant's mobile home. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 82 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

Background and Evidence

This tenancy started on October 28, 2010. Prior to that time, the Tenant rented another pad site in the manufactured home park for approximately 2 months. Pad rent is \$250.00 per month payable in advance on the 1st day of each month.

The Landlord said the Tenant did not pay rent for November 2010 when it was due and as a result, on November 2, 2010, the Landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the door of the Tenant's mobile home. The Landlord said the Tenant did not pay the rent arrears indicated on the Notice and has not paid rent for December 2010.

The Landlord said that the Tenant left the community (where he also works) on October 29, 2010 and has not returned since that time. The Landlord also said that he discovered that the Tenant removed all of his belongings (save a mattress) from the mobile home, the door was removed and boarded up, there is no skirting around it and no utilities are hooked up to it. The Landlord said that although the manufactured home is registered in the Tenant's name he borrowed the money from the Landlord to purchase it. For all of these reasons, the Landlord said he believes the Tenant has abandoned the manufactured home site.

Analysis

Section 34(1)(b) of the Regulations to the Act states that,

“A Landlord may consider that a tenant has abandoned personal property if

- (b) subject to subsection (2), the tenant leaves the personal property on a manufactured home site
 - (i) that for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
 - (ii) from which the tenant has removed substantially all of his or her personal property.”

Section 34(2) of the Regulations to the Act states that,

“The Landlord is entitled to consider the circumstances described in paragraph (1)(b) as abandonment only if

- (a) The Landlord receives an express oral or written notice of the tenant's intention not to return to the manufactured home site, or
- (b) The circumstances surrounding the giving up of the manufactured home site are such that the tenant could not reasonably be expected to return to the manufactured home site.

I find that the Tenant has not resided continuously on the manufactured home site since October 29, 2010 and has not paid pad rent for the months of November and December 2010. I also find that the Tenant has removed substantially all of his personal property (save the manufactured home) from the manufactured home site. Given that the Tenant has not returned to his employment in the community, that he has little equity in the manufactured home, that he has not connected utilities to the manufactured home or put skirting around it and has boarded up the door to the manufactured home, I further find that it is not reasonable to expect that the Tenant will return to the manufactured home site. As a result, I find that the Tenant has abandoned the manufactured home site.

Consequently, once the Landlord has complied with s. 35 of the Regulations to the Act by storing the Tenant's abandoned property (ie. the manufactured home) for a period of 60 days commencing December 16, 2010, he may thereafter dispose of it in accordance with s. 39 of the Regulations to the Act.



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As I find that manufactured home site has been abandoned by the Tenant, the Landlord's application for an Order of Possession is dismissed with leave to reapply.

Conclusion

The manufactured home site is abandoned and the Landlord may dispose of the Tenant's personal property as provided under Part 6 of the Regulations to the Act. Consequently, the Landlord's application for an Order of Possession is 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: December 16, 2010.

Dispute Resolution Officer