

Decision

Dispute Codes: OPB, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking an Order of Possession based on expiry of a fixed-term tenancy which specified that the fixed term of the tenancy expires on January 31, 2011 and the tenant must move out.

Both parties attended and gave testimony during the hearing.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether the landlord is entitled to an Order of Possession based on the agreement?

Background and Evidence

Submitted into evidence was a copy of the tenancy agreement and written testimony from the landlord. No evidence was submitted by the respondent

The landlord testified that the tenancy expired on January 31, 2011 and the tenant evidently vacated the manufactured home, but failed to remove the home itself. The tenant has not contacted the landlord nor paid any rent since the expiry of the agreement. The landlord was seeking an Order of Possession.

The tenant acknowledged that the site was abandoned and that the manufactured home was left on the site. The tenant testified that the owner of the home has claimed bankruptcy and that any arrangements to remove the structure would no longer involve the tenant. The tenant provided the contact information of the Trustee for service.

Analysis

Based on the evidence, I find the tenancy agreement was to end on January 31, 2011.

Section 31 of the Manufactured Home Park Tenancy Act, (the Act) states 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)

Section 48 (2) of the Act states that a landlord may request an order of possession of a manufactured home site in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

(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;

(c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the manufactured home site at the end of the fixed term;

(d) the landlord and tenant have agreed in writing that the tenancy is ended.
(my emphasis)

In this instance the parties had signed a fixed term tenancy with a termination date of January 31, 2011. Based on the above facts I find that the landlord is entitled to an Order of Possession.

Given the above, I hereby grant the landlord's request for an order of possession based on the terms of the fixed term tenancy agreement.

The landlord is required to follow Part 6 of the Manufactured Home Park Tenancy Regulation with respect to the tenant's abandoned property.

Conclusion

Based on evidence and testimony I hereby issue an Order of Possession in favour of the landlord, effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme 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 *Manufactured Home Park Tenancy Act*.

Dated: April 2011.

Residential Tenancy Branch