



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, FF

Introduction

This matter dealt with an application by the Applicant to cancel a Notice to End Tenancy for Cause and to recover the filing fee for this proceeding.

The Applicant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by registered mail on May 26, 2011. Based on the evidence of the Applicant, I find that the Landlord was served with the Applicant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Is the Applicant entitled to an order to cancel the Notice to End Tenancy?

Background and Evidence

This tenancy started prior to 1996 as a month to month tenancy. Rent for the pad is \$150.00 per month payable in advance of the 1st day of each month. The Tenant (G.L.) past away approximately 4 years ago and the Estate of the Tenant is not settled. At the present time the Applicant (J.T.) said there is an application by the Estate to the Public Trustee to resolve the Estate, but until that application is accepted there is no one administering the Estate and there is no executor. The Applicant said she is not responsible for the Estate and she has no authority to deal with the Estate’s assets.

The Landlord said this situation is frustrating as he has not been paid pad rent for October, 2010 of \$50.00 and no rent has been paid from November, 2010 to June, 2011 in an amount of \$1,200.00 (8 months X \$150.00). The Landlord said he has a letter dated October 5, 2007 from the a Lawyer saying J.T. is looking after the Estate and that is why he issued the Notice to End Tenancy to her. The Landlord said he issued a 1 Month Notice to End Tenancy for Cause in May, 2011.

The Applicant J.T. said the lawyer that issued the letter saying that she was looking after the Estate lost his license and she had no authority to deal with the Estate assets.

Analysis

It was apparent from both the Landlord and the Applicant's testimony that the mobile home in question is part of the Estate of the deceased Tenant (G.L.). The Landlord did not mention the Estate of G.L. on the Notice to End Tenancy as he was issuing it to the person that he believed was handling the Estate of G. L. During the conference call the person named on the Notice to End Tenancy the Applicant (J.T.) said she was not administering the Estate and she has no authority to make decisions regarding the Estate of G.L. I accept the Applicants testimony that she is not authorized to act for the Estate of G.L. and therefore I find that the Notice to End Tenancy may be addressed to the wrong person or at least should have included the Estate of G.L. on it. Consequently I find in favour of the Applicant and cancel the Notice to End Tenancy dated June 10, 2011, due to the Notice being addressed to the wrong tenant or entity. The Notice to End Tenancy is not valid. The Landlord said that he had dated the Notice to End Tenancy incorrectly and it should have been dated prior to May 17, 2011 when he posted it on J.T.'s door not June 10, 2011 as on the Notice.

As the Tenant has been successful in this matter, she is also entitled to recover from the Landlord the \$50.00 filing fee for this proceeding. The Tenant is Ordered to deduct the \$50.00 filing fee for this proceeding from the unpaid rent owed to the Landlord.

Conclusion

The Notice to End Tenancy dated June 10, 2011 is cancelled and the tenancy will continue as understood in the tenancy agreement.

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*.

Residential Tenancy Branch