



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlord's application for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on February 20, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for cause?

Background and Evidence

The landlord testifies that this month to month tenancy started on September 01, 2010. The tenant pays a pad rent of \$387.22 per month.

The landlord testifies that the tenant failed to sign the tenancy agreement in place at the start of the tenancy but was given a copy of this agreement along with a copy of the park rules and regulations. The landlord testifies that in the tenancy agreement the tenant was required to replace the roof of the trailer with a peak roof and to repair the siding and skirting on the trailer. This clause stipulates that the tenant had 90 days to do this work from the commencement of the tenancy however the landlord states they did extend this time limit for the tenant to the spring of 2011.

The landlord testifies that the tenant failed to make these alterations to his trailer. The landlord states they tried to contact the tenant concerning this required work but were unsuccessful. In September, 2011 the landlord states they discovered that the tenant had moved from the trailer and the landlord had to determine the tenant's whereabouts through the tenant's realtor. The landlord states they began to e-mail the tenant back and forth concerning the repairs to his trailer. (Copies of emails provided in evidence).

The landlord testifies that the tenant gained approval from the landlord to rent his trailer to two other people who became tenants of the tenant. The landlord testifies however that although she did give approval for these tenants to live on the park the pad rent remained the responsibility of the original tenant. The landlord states the tenants of the tenant offered to do the repairs to the trailer and at first the tenant agreed to set up an account for his tenants to use to acquire materials for this work. However the landlord states eventually the tenant changed his mind and would not agree to making the repairs or paying for his tenants to do the repairs.

The landlord testifies that the tenant was served with a One Month Notice to End Tenancy on January 19, 2012. This Notice was sent to the tenant's new address which had been verified by his tenants and his selling agent. The Notice has an effective date of March 01, 2012 and gives two reasons to end the tenancy as follows:

1. Tenant has not done the required repairs of damage to the unit/site
2. Breach of a material; term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testifies that as the tenant has had ample time to make these repairs and still remains responsible for the trailer the tenant has breached a material term of the tenancy agreement and the landlord seeks an Order of Possession for the site by March 31, 2012.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord. I have reviewed the tenancy agreement and find it does contain a clause pertaining to the work required to the trailer. The landlord has established that the tenant was given more than a year to complete this required work and has failed to do so. Despite the tenant not signing the tenancy agreement the tenant did have a copy of this agreement and by paying rent for this site I find a tenancy has been established between the parties.

The tenant was deemed to have been served the Two Month Notice to End Tenancy on January 24, 2012 five days after it was posted pursuant to s. 83(a) of the *Act*. This Notice states that the tenant has a right to dispute the Notice with 10 days after it is received by filing an application for Dispute Resolution. If the tenant does not file an application within 10 days, the tenant is presumed to accept this Notice and must vacate the site by the date set out on the Notice. If the tenant does not do either of these things then the landlord can apply for an Order of Possession.

As the tenant did not file an application to dispute the Notice I find the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession for the site effective on March 31, 2012 pursuant to s. 48 of the *Act*.

As the landlord has been successful with their claim the landlords are also entitled to a Monetary Order to recover the \$50.00 filing fee pursuant to s.65(1) of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on March 31, 2012. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY ISSUE a Monetary Order to the landlord for the \$50.00 filing fee. A copy of the landlord's decision will be accompanied by a Monetary Order for \$. The order must be served on the respondent and is enforceable through the Provincial Court 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: March 09, 2012.

Residential Tenancy Branch