



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: OPR, MNR and FF
Tenant: CNR and RR

Introduction

This hearing addresses applications by both the landlord and the tenant.

The landlords' application of August 8, 2013 sought an Order of Possession in support of a 10-day Notice to End Tenancy for unpaid rent served in person on July 31, 2013. The landlord also sought a monetary award for the unpaid rent and recovery of the filing fee for this proceeding.

The tenant's application of application of July 22, 2013 sought to have a Notice to End Tenancy for unpaid rent set aside. (I note that the notice referred to in the landlord's application was served after the tenant applied.) The tenant also sought a rent reduction.

Issue(s) to be Decided

Is there a tenancy within the meaning of the *Manufactured Home Park Tenancy Act*? Is the landlord entitled to an Order of Possession based on the notice to End Tenancy of July 31, 2013 and a Monetary Order for the unpaid rent?

Background and Evidence

This tenancy was intended to be related to a "rent to own" agreement signed by the parties on July 1, 2013 under which the tenant was to pay the Manufactured Home Park the pad fee of \$465 per month and \$50 per month to the landlord toward the purchase.

While I have no jurisdiction over the purchase agreement, during the hearing, the landlord gave evidence that she had repudiated that agreement, as the tenant had made no payment since moving into the rental unit. The agreement stated that, "Failure to do so [make payments] may nullify and void this rent to own contract."

The tenant submitted into evidence two pages of a rental agreement between the Manufactured Home Park and the tenant for a tenancy beginning July 1, 2013.

However, the landlord noted that the rental agreement was based on the failed agreement to purchase. As she remains the registered owner of the manufactured home, only she can be party to an agreement with the manufactured home park. Therefore, she stated that the rental agreement between her tenant and the park is void.

The landlord stated that the tenant has made no payments since moving in to the unit on July 1, 2013 as she recalls or on July 7, 2013 according to the tenant's recollection. She stated that to avoid an action by the manufactured home park, she gave the tenant the money to pay the pad rent.

Analysis

I accept the evidence of the landlord that the agreement to purchase is void and that, as he is not the registered owner of the unit, the tenant does not qualify to enter into a rental agreement with the manufactured home park.

Section 4(a) of the *Manufactured Home Park Tenancy Act* states that the *Act* does not apply to a tenancy in which both the site and the home are rented to the same tenant.

Therefore, I find that this tenancy reverts to a standard tenancy under the *Residential Tenancy Act*.

Section 26 of the *Residential Tenancy Act* provides that tenants must pay rent when it is due. Section 46 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice and in the interim, has not paid the rent for August 2013.

Therefore, under section 46(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was August 10, 2013. Accordingly, I find that the landlord is entitled to an Order of Possession to take effect two days from service of it on the tenant.

However, as the landlord's application for a monetary award is for both rent and payment toward purchase and as the tenant stated during the hearing that he had paid the rent for September 2013, I find that the monetary claim should be dismissed with leave to reapply. I decline to award the landlord's filing fee as I find a lack of due diligence on her part contributed to this dispute. As the tenancy is ending, the tenant's request for a rent reduction is moot.

Conclusion

The tenant's application is dismissed without leave to reapply the landlord's request for a monetary order is dismissed with leave to reapply. I decline to award the landlord's filing fee as I find a lack of due diligence contributed to this dispute.

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect two days from service of it on the tenants.

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: August 26, 2013

Residential Tenancy Branch

