



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Pines Mobile Home Park LLP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNDC, MNR, OPB, OPR

Introduction

This is an application for an Order of Possession, a request for a Monetary Order for \$13,338.37 and a request for recovery of the \$100.00 filing fee.

The applicant(s) testified that the male respondent was served with notice of this hearing, on November 14, 2013, by registered mail that was sent to his present address.

The applicants further testified that the female respondent was served with notice of this hearing by registered mail that was sent to the dispute address, and to the male respondents address, because the female respondent has never provided them with a forwarding address and they were unable to locate her.

Pursuant to section 90 of the Residential Tenancy Act, documents sent by registered mail to a tenant's present address are deemed served five days after mailing and therefore it is my finding that the male respondent has been properly served with notice of the hearing.

It is my finding however that the female tenant has not been served with notice of today's hearing, because serving a notice of hearing to the last known address is not proper service, nor is serving the notice of hearing to the co-respondent considered proper service if the female respondent is not living at that address, and there is no evidence that she has received that notice of hearing.

Therefore this hearing will proceed against the male respondent only, and the female respondent's name will be removed from any Orders issued.

All testimony was taken under affirmation.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a Monetary Order in the amount of \$13,338.37 and recovery of the filing fee of \$100.00 for a total Order of \$13,438.37.

Background and Evidence

The applicants testified that:

- They received an Order of Possession against the female applicant on July 4, 2012 however they held off enforcing that Order until November 4, 2013.
- The female tenant's belongings were removed by the bailiffs; however the bailiffs would not remove the manufactured home, as it was in both the female, and male respondent's names.
- They are now requesting that an Order of Possession be issued in both respondents names, so that the manufactured home can be removed from the property.
- They had the following costs to enforce that the original Order of Possession:

Legal costs to obtain Writ of Possession	\$1575.00
Bailiff costs	\$2963.87
Garbage removal costs	\$112.00
Cost for office staff to deal with enforcing the Order of Possession	\$120.00
Total	\$4770.87

The applicants further testified that:

- After receiving the original Order of Possession they decided to allow the respondent's time to sell the manufactured home and therefore on July 30, 2012 they entered into a license to occupy agreement with both of the respondents.
- The respondents made payments under that licensed occupy until August of 2013 when rent payments stopped, and although they allowed the tenants some time to make the payments, payments were not forthcoming and that's why the Order of Possession was enforced on November 4, 2013.
- The total rent outstanding to today's date of January 8, 2013 is \$2112.50.
- They will also have costs to remove the manufactured home from the rental property.

They are therefore requesting a Monetary Order as follows:

Rent outstanding	\$2112.50
Estimated Legal costs to obtain writ of possession	\$1575.00
Estimated trucking costs to remove the manufactured home	\$1700.00
Estimated labor cost to prepare manufactured home for removal	\$1440.00
Estimated outstanding property taxes which the landlords will have to pay before a permit will be issued to remove the manufactured home	\$1740.00
Total	\$8567.50

They are therefore requesting an Order of Possession for soon as possible, and a total Monetary Order as follows:

Costs for enforcing original Order of Possession	\$4770.87
Rent outstanding and estimated costs to remove manufactured home	\$8567.50
Filing fee	\$100.00
Total	\$13438.37

Analysis

First of all it is my finding that this claim should have been brought under two applications, as it deals with two separate tenancies.

The original tenancy ended on July 4, 2012 when the original Order of Possession was issued against the female respondent.

Therefore the portions of this claim that relate to the enforcement of the Order of Possession as follows should have been filed on a separate application:

Legal costs to obtain Writ of Possession	\$1575.00
Bailiff costs	\$2963.87
Garbage removal costs	\$112.00
Cost for office staff to deal with enforcing the Order of Possession	\$120.00
Total	\$4770.87

Further since the female respondent was the only person named on that Order of Possession, this portion of the claim should have been filed strictly against the female respondent.

Therefore it's my decision that since the female respondent has never been served with notice of today's hearing, the above portion of the claim is dismissed with leave to reapply against the female respondent only.

Further it is also my finding that the second tenancy came into existence on July 30, 2012 when both respondents signed a licensed occupy, and agreed to pay rent for the dispute rental pad.

The parties call this a licensed occupy, however since licenses to occupy are not allowed under the Manufactured Home Park Tenancy Act, it's my finding that this is actually a tenancy agreement, since rent has been paid and accepted.

Therefore as far as the request for an Order of Possession is concerned it is my decision that I am unable to issue an Order of Possession at this time because there has been no Notice to End Tenancy served on the parties with regards to this second tenancy.

If the parties still wish to end this tenancy they must serve a Notice to End Tenancy on at least one of the tenants in the second tenancy agreement.

Further, although I am willing to issue an Order for the rent that is outstanding, I will not issue any Order for any costs relating to enforcing an Order of Possession which has not been issued, and for which costs have not been incurred.

I will allow \$50.00 only of the filing fee, as I've only allowed a small portion of this monetary claim.

Conclusion

The request for an Order of Possession is dismissed.

I've issued a Monetary Order in the amount of \$2162.50.

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: January 08, 2014

Residential Tenancy Branch

