



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Stonecliff Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid pad rental pursuant to section 48;
- a monetary order for unpaid pad rental pursuant to section 60; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 65.

The tenant/Respondent (the Respondent) did not attend this hearing, although I waited until 1:55 p.m. in order to enable her to connect with this teleconference hearing scheduled for 1:30 p.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Preliminary Issue – Service of Documents

The landlord gave sworn testimony and written evidence that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was served to the Respondent in two separate ways. The landlord entered into written evidence a witnessed Proof of Service document in which the local manager of the manufactured home park stated that he posted the 10 Day Notice on the door of the manufactured home at 7:00 p.m. on March 7, 2014. The landlord also maintained that a second copy of this 10 Day Notice was sent to the Respondent by registered mail at the mailing address listed for the owner of this manufactured home under the *Manufactured Home Act*. The landlord provided the Canada Post Tracking Number and the results of the search under the *Manufactured Home Act*. In accordance with sections 81 and 83 of the *Act*, I am satisfied that the Respondent was deemed served with the 10 Day Notice posted on the door of the manufactured home on March 10, 2014, the third day after its posting.

The landlord testified that he sent copies of the landlord's dispute resolution hearing package to the Respondent by registered mail on April 2, 2014. He provided the Canada Post Tracking Number to confirm this registered mailing. He said that this hearing package and evidence package was returned as unclaimed by Canada Post.

I asked the landlord whether the Respondent had provided the landlord with the mailing address where the landlord sent the hearing and evidence package. He explained that the landlord's company purchased this manufactured home park in November 2013. He said that there had been very few records kept by the previous owners/managers of this park. He testified that there was no Tenancy Agreement for this pad rental site and the only way that the landlord could obtain an address for the person who placed the manufactured home on this site was through checking the records for the ownership of this manufactured home filed under the *Manufactured Home Act*.

Analysis – Service of Documents

Section 82(1) of the *Act* establishes the following Special Rules for the service of an application for a monetary award under the *Act*:

82 (1) *An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 6, when required to be given to one party by another, must be given in one of the following ways:*

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 64 (1) [director's orders: delivery and service of documents]...*

Section 82(2) of the *Act* establishes the following Special Rules for the service of an application for an Order of Possession:

(2) *An application by a landlord under section 48 [order of possession for the landlord],... must be given to the tenant in one of the following ways:*

- (a) by leaving a copy with the tenant;*
- (b) by sending a copy by registered mail to the address at which the tenant resides;*
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;*

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 64 (1) [director's orders: delivery and service of documents]...

In this case, the landlord did not apply for a substituted service order under section 64(1) of the *Act*. However, section 64(2)(b) and (c) of the *Act* provides me with the delegated authority to make a finding “that a document has been sufficiently served for the purposes of this *Act*” and “that a document not served in accordance with section 81 or 82 is sufficiently given or served for the purposes of this *Act*.”

In considering whether to accept that the landlord's notice of this dispute resolution hearing has been sufficiently served to the Respondent, section 64(2)(c) of the *Act* clearly allows me to take into consideration the extent to which the purposes of the *Act* have been served on the basis of the landlord's attempted service of the dispute resolution hearing package and written evidence package. I note that there is a significant difference between the methods whereby a landlord can serve an application for dispute resolution to a Respondent for a monetary Order (section 82(1) of the *Act*) and for an Order of Possession for unpaid pad rental (section 82(2) of the *Act*). A landlord seeking a monetary Order cannot serve an application by posting the hearing package, including the application and Notice of a Dispute Resolution Hearing, on the door of the manufactured home, while a landlord seeking an Order of Possession for unpaid pad rental can. This higher standard for serving notices of hearing regarding a monetary award would appear to take into account the possibility that the tenancy status of the person or persons occupying a manufactured home pad rental site may have changed without formally notifying the landlord.

While whoever placed the manufactured home on the pad rental site would be responsible for notifying the landlord of any change in tenancy status, this particular situation is complicated by the poor quality of the documentation conveyed to the current landlord by the previous owners/operators of this manufactured home park. After reviewing the circumstances surrounding the landlord's service of documents to the Respondent, I find that the landlord has not served the dispute resolution hearing package in accordance with section 82(1) of the *Act*. In order to make a finding under section 64(2)(b) or (c) of the *Act*, I would need more evidence that the individual listed as the manufactured home owner in the documentation filed under the *Manufactured Home Act* actually placed the manufactured home on the pad rental site and/or is responsible for the unpaid pad rental claimed by the landlord. For these reasons, I find that the landlord has failed to provide evidence to demonstrate that the Respondent has

been sufficiently served in order to enable the landlord to obtain a monetary Order. I dismiss the landlord's application for a monetary Order with leave to reapply.

In considering the landlord's service of his application for an Order of Possession, I find that those parties currently occupying the manufactured home should be aware that the landlord maintains that the pad rental remains owing as a result of the landlord's posting of the 10 Day Notice on the door of the manufactured home on March 7, 2014. Rather than taking any measures to address this issue with the landlord, the current occupants have made no attempt to contact the landlord directly or through anyone else who is responsible for leaving the manufactured home on the pad rental site. The landlord has chosen to send the dispute resolution hearing package to an individual identified after checking with records filed under the *Manufactured Home Act*. After considering the unusual circumstances of this case in which the landlord was unable to obtain proper documentation from the previous owner of this manufactured home park, I am satisfied that the measures taken by the landlord, considered in concert with the posting of the 10 Day notice on the door of the manufactured home, does serve the purposes of this *Act* with respect to the notification of the landlord's application for dispute resolution. In accordance with section 64(2)(c) of the *Act*, I find that the landlord's documents relating to the landlord's application for an Order of Possession for unpaid pad rental that were not served in accordance with sections 81 or 82 of the *Act* have been sufficiently served for the purposes of this *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

As noted above, the landlord purchased this manufactured home park in November 2013. The landlord testified that the monthly pad rental for this site is set at \$215.40, payable in advance on the first of each month. The landlord has no record of a written tenancy agreement for this site.

The landlord's 10 Day Notice identified \$751.20 in unpaid pad rental owing as of March 1, 2014. Since that date, the landlord testified that there have been no payments received from anyone with respect to this pad rental site. The landlord testified that some of the above fees were for late fees, which the landlord cannot establish in the absence of a written tenancy agreement. The landlord gave undisputed sworn testimony that the current amount of unpaid pad rental owing for this site is \$956.00.

Analysis

The Respondent or anyone else failed to pay the amount identified in the 10 Day Notice in full within five days of being deemed to have received the 10 Day Notice posted on the door of the manufactured home on March 10, 2014. There has been no application submitted pursuant to section 39(4) of the *Act* within five days of being deemed to have received the 10 Day Notice. In accordance with section 39(5) of the *Act*, the Respondent's failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the manufactured home pad rental site to be vacated by March 22, 2014. As that has not occurred, I find that the landlord is entitled to a 7 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the Respondent. If the Respondent does not vacate the manufactured home park pad rental site within the 7 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As noted above, I dismiss all monetary aspects of the landlord's application with leave to reapply.

Conclusion

I grant an Order of Possession to the landlord effective **7 days after service of this Order** on the Respondent(s). Should the Respondent and anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I dismiss the landlord's application for a monetary Order with leave to reapply.

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: May 22, 2014

Residential Tenancy Branch

