



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, MNDC, FF

Introduction

This hearing was re-convened in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for: an Order of Possession for the rental suite; money owed or compensation for damage or loss under the *Manufactured Home Park Tenancy Act* (the “Act”), regulation or tenancy agreement; and to recover the filing fee.

The previous hearing held on June 18, 2014 was adjourned. The Interim Decision issued on the same day explained in detail the reasons why the adjournment, requested by the Landlord, was granted and should be read in conjunction with this Decision.

The Landlord and his legal counsel and the Tenant appeared for the reconvened hearing. At the start of the hearing, I confirmed with both parties that the instructions in the Interim Decision regarding the submission of written evidence by the Landlord had been complied with.

The hearing commenced with some initial submissions by the Tenant regarding his claim for an Order of Possession for the rental suite. The Tenant’s written submissions indicate an allegation that the Landlord and his agents obtained a Writ of Possession from the BC Supreme Court fraudulently while the Tenant had an Application for Review Consideration in progress. The Landlord enforced the Order of Possession and the Tenant now claims that he has incurred monetary loss because the Landlord enforced an illegal and improperly obtained Order of Possession.

I had explained to the parties during the hearing on June 18, 2014, that the Residential Tenancy Branch does not have jurisdiction over orders issued by the Supreme Court and that this matter would be more appropriately dealt through remedies available in the Supreme Court. As a result, I refused to consider the Tenant’s Application for an Order of Possession and dismiss this portion of the Tenant’s Application. However, the Tenant is at liberty to pursue this matter through the Supreme Court.

The Tenant submitted that he had further evidence that the Writ of Possession was illegally obtained by the Landlord and indicated that he would be pursuing this through the Supreme Court.

It appears that the Tenant's monetary claim hinges and stems directly from his allegation that the Landlord has enforced an illegal Writ of Possession and has overstepped the boundaries of the Writ. The monetary claim is based on events that have transpired since the Writ of Possession was enforced by the Landlord.

I attempted to offer the parties a platform to settle the matter during the hearing and after a small discussion it was evident that the parties were not going to be able to reach a settlement in this matter. As a result, the Tenant decided that it was best to withdraw his monetary claim and seek remedy with the Supreme Court in relation to the Writ of Possession issued to the Landlord; depending on the outcome of the Tenant's appeal with the Supreme Court, the Tenant will then reconsider his monetary claim amount, at which point it may be subject to change.

Conclusion

For the reasons set out above, I dismiss the Tenant's monetary claim with leave to re-apply. However, I would strongly encourage the parties to look for informal resolution between themselves and any action taken to pursue informal resolution should be documented and retained by the parties.

I also caution the parties in relation to the service of documents which appeared to be a source of frustration during the hearing. Sections 81 and 82 of the Act provides for the methods a party may utilise for the service of certain documents submitted for dispute resolution proceedings. If a party disputes the service of a document, the other party is responsible for proving that the document was served to the other party and in addition may rely on the deeming provisions of Section 83 of the Act to do so.

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: September 16, 2014

