



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HOMELIFE GLENAYRE REALTY CHILLIWACK LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with the Applicant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The rental unit owners' agent ("Applicant") confirmed that he represented the two out-of-town rental unit owners ("Owners"), for which he had a one-time contract for eviction services, dated June 29, 2014.

The Respondent did not attend this hearing, although the hearing lasted approximately 24 minutes in length. The Applicant attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The Applicant testified that he served the Respondent with the Application for Dispute Resolution hearing package ("Application") on September 10, 2014 via registered mail at the rental unit address. The Applicant served the Respondent at the rental unit address, as an agent, on the basis of the Owners' information. He provided a Canada Post receipt and tracking number as proof of service, with his Application. The Applicant testified that the Application was returned to him by Canada Post, probably because the Respondent had already vacated the unit, and that he was unsure of the date when the Application was returned. In accordance with sections 89 and 90 of the *Act*, I find that the Respondent was deemed served with the Application on September 15, 2014, the fifth day after its registered mailing.

The Applicant gave sworn testimony that a 10 Day Notice to End Tenancy for Unpaid Rent, dated July 10, 2014 ("10 Day Notice"), was posted to the door of the rental unit address, on July 10, 2014 at 12:30 p.m. The Applicant served the Respondent at the rental unit address, as an agent, on the basis of the Owners' information. The Applicant has attached a proof of service with a witness signature, in his Application. Although the name of the witness in the 10 Day Notice is unclear, as it was not printed as per the form's requirement, the Applicant confirmed that it was his cousin, MB, who witnessed the posting. The Applicant also clarified that the witness statement was completed on September 3, 2014 because the proof of service form itself was completed on that date. The Applicant testified that this was an Application under the *Residential Tenancy Act* for a detached rancher home, rather than under the *Manufactured Home Park Tenancy Act*, which was what was indicated on the 10 Day Notice. In accordance with sections 88 and 90 of the *Act*, I find that the Respondent was deemed served with the 10 Day Notice on July 13, 2014, the third day after its posting.

Issues to be Decided

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

Is the Applicant entitled to a monetary award for unpaid rent arising out of this tenancy?

Is the Applicant entitled to recover the filing fee for this Application from the Respondent?

Background and Evidence

The Applicant testified that there was no written tenancy agreement in place. Upon questioning, the Applicant testified that he did not know when the tenancy began, when the tenant moved in, whether it was a fixed term or month-to-month tenancy, how much rent was owed per month, when the rent was due, and whether a security deposit was paid.

When questioned whether he tried to get more information from the Owners, as he was their agent, the Applicant testified that there was a language barrier with the Owners and he was only given limited information.

The Applicant provided a handwritten document with his Application with "Payments received by tenant" written on the bottom of the document. The document ranged from January 2011 to June 2014, showing "CAD 600" written beside some months and "0" written beside other months.

The Applicant testified that he posted a 10 Day Notice, dated July 10, 2014 on the same date. He applied for an Order of Possession for non-payment of full rent. The 10 Day Notice indicates that \$7,200.00 in unpaid rent was due on August 1, 2013. The Applicant testified that he was seeking rent from January to December 2013 at \$600.00 per month, because that was the one full year on the "Payments received by tenant" document, where he claimed that rent was fully unpaid.

The Applicant testified that he believed that the Respondent had probably vacated the unit before he was hired as an agent to evict the Respondent. He testified that when he posted the 10 Day Notice on the Respondent's door, he knocked on the door, there was no answer and the windows were shut so he could not see inside the unit. The Applicant testified that he also posted an eviction letter on the Respondent's door a couple of weeks after he served the 10 Day Notice, but he could not recall the date of the letter or the date of the posting and he did not provide this letter as part of his Application. The Applicant testified that he knocked on the Respondent's door during this time, there was no answer and the windows were again shut so that he could not see inside the unit. The Applicant testified that he knocked on the Respondent's door again a couple of weeks ago and there was no answer, he could not see or hear anything from inside the unit, and he was pretty sure that the unit was vacant.

The Applicant is also seeking to recover the filing fee of \$100.00 for his Application from the Respondent.

Analysis

A "tenancy agreement" is defined under Section 1 of the *Act* as "...an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit."

Section 12(b) of the *Act* requires that "the standard terms are terms of every tenancy agreement...whether or not the tenancy agreement is in writing." Section 13 sets out the requirements for a tenancy agreement where Section 13(2) states: "a tenancy agreement must comply with any requirements in the regulations and must set out all of the following..."

I find that the Applicant was unable to establish any standard terms in accordance with Sections 12 and 13 of the *Act*. The Applicant failed to show whether this was a fixed term or month-to-month tenancy. He was unable to show the amount of rent due for the unit in question and when it was due. He was unable to show whether there was a

security deposit due, what the amount was, whether it was paid and the date of any payment.

The Applicant provided a "Payments received by tenant" document that was not signed or dated, does not reference the unit, the Owners, the Applicant or the Respondent in question, and does not explain what "CAD 600" refers to. I find that it is insufficient to establish any potential rent owing by the Respondent for the unit in question.

Moreover, I find that the Applicant has not provided sufficient evidence to show that a tenancy exists in this matter. He was unable to establish that a written or oral tenancy agreement exists. He was unable to show whether the tenant even moved in to the unit and whether a tenancy even began. I find that a "tenancy agreement" as per the above *Act* definition, was not established here. I find that the Applicant has failed to establish that the unit in question was rented in accordance with the *Act*.

As the Applicant did not provide sufficient evidence that a tenancy existed, in his Application or at the hearing, I dismiss his entire Application with leave to reapply.

Conclusion

I dismiss the Applicant's entire application 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 *Residential Tenancy Act*.

Dated: October 29, 2014

Residential Tenancy Branch

