



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vista Village Trailer Park Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for cause and to recover the filing fee from the tenants for the cost of the application.

An agent for the landlord company and one of the tenants attended the hearing and each gave affirmed testimony. The landlord provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the tenants. The tenant also called 2 witnesses who gave affirmed testimony. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Is the landlord entitled under the *Manufactured Home Park Tenancy Act* to an order of possession for cause?

Background and Evidence

The landlord's agent testified that the parties entered into a written month-to-month tenancy agreement for the rental of a site in a manufactured home park commencing August 1, 2010 for rent in the amount of \$300.00 per month which was raised during the tenancy and is currently \$340.00 per month. Rent is due on the 1st day of each month, and there are no rental arrears except rent for this month was due yesterday and remains unpaid. A copy of the tenancy agreement has been provided. It is signed by a landlord on September 1, 2011 and by 2 tenants on September 15, 2011.

The landlord further testified that the tenants entered into the written tenancy agreement fraudulently by advising the landlord that they had purchased the manufactured home. The owner of the manufactured home is the grandfather of one of the tenants, who testified at a previous hearing that he bought the manufactured home for his grandson, being a tenant named in this dispute. The landlord issued a notice to end tenancy to the registered owner and applied for dispute resolution and the Arbitrator declined jurisdiction and dismissed the landlord's application with leave to reapply because the landlord has no tenancy agreement with the registered owner. A copy of the Decision dated March 25, 2014 has been provided.

The landlord served the tenants named in this dispute with a notice to end tenancy and the tenants moved out. The manufactured home is now vacant. The landlord believes that the tenants and the grandfather are trying to sell the manufactured home but claim that the landlord is barring perspective tenants. The landlord denies that and stated that all perspective purchasers are not suitable tenants for the manufactured home park.

The landlord served the tenants with a 1 Month Notice to End Tenancy for Cause on May 13, 2014 but testified that the notice contained an error in that it had no reason stated on it to end the tenancy. The landlord served the tenants again with another 1 Month Notice to End Tenancy on June 19, 2014 by registered mail to each of the 2 tenants and to the registered owner. Tracking numbers were also provided as evidence of registered mail. The landlord has also provided a copy of the notice which is dated June 19, 2014 and contains an expected date of vacancy of July 31, 2014. The notice is issued to the tenants named in this dispute and states that the reasons for issuing it are:

- Tenant has not done required repairs of damage to the unit/site
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The tenants have not disputed the notice and the registered owner was also served with the notice to end tenancy. The landlord's agent also testified that the registered owner was served with the Landlord's Application for Dispute Resolution by registered mail on August 27, 2014 putting him on notice of this application, and the landlord asks for an order of possession.

The tenant testified that rent for October, 2014 was paid earlier this day including a \$25.00 late fee because it's a day late.

The tenant further testified that the landlord does not have an oral or written tenancy agreement with the registered owner, and the registered owner has never paid rent, only the tenants named in this dispute have paid rent. The tenants moved to the area, and the tenant's grandfather purchased the manufactured home for them to live in. The registered owner did not enter into a tenancy agreement, nor did the tenants do so fraudulently; the tenants told the landlord that prior to moving in.

The tenant also testified that the landlord is refusing to allow new purchasers to move into the manufactured home making it impossible to sell. Further, the tenancy agreement contains the names of 2 parties, one of which is not the same name as on the landlord's application for dispute resolution.

The tenants' witness corroborated that testimony, but no evidence from the tenant has been provided for this hearing. The witness also testified that he is the grandfather of one of the named tenants and the registered owner of the manufactured home.

Analysis

The *Manufactured Home Park Tenancy Act* provides that if a tenant does not dispute a landlord's 1 Month Notice to End Tenancy for Cause within 10 days of service, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. I am satisfied in the evidence that the tenants and the registered owner were each served with a copy of the notice by registered mail on June 19, 2014 and under the *Act* are deemed to have been served 5 days later, or on June 24, 2014. Neither the tenants nor the registered owner have disputed the notice and the tenants moved out of the manufactured home. The manufactured home is now vacant landlord applies for an Order of Possession of the manufactured home site.

I have read the tenancy agreement and note that it states: *"10. Tenant's Obligations: In addition to meeting any other obligations under the MHPTA, the Tenant agrees to the following as material terms of the tenancy:... i) that at all times at least one of the persons listed as a "Tenant" on this Tenancy Agreement must be the legal registered owner of the home which occupies the Site;" and, "I) that the Tenant agrees to accept any notice, order, process or document required or permitted to be given when served in accordance with the MHPTA."*

The *Manufactured Home Park Tenancy Act* describes a tenant and a tenancy agreement as:

- "tenant"** includes
(a) the estate of a deceased tenant, and

(b) when the context requires, a former or prospective tenant.

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities.

In this case, I find that the tenants entered into a tenancy agreement which specified that at all times at least one of the persons listed in the tenancy agreement must be the legal registered owner of the manufactured home. The evidence is not clear on when the manufactured home moved into the park, but the tenancy agreement is dated September, 2011 and states that the tenancy commences a year earlier, August 1, 2010. The evidence is not clear on who the landlord may have had a tenancy agreement with prior to August 1, 2010, however I find that the registered owner was a former tenant in that the registered owner had a tenancy agreement with the landlord pursuant to the *Act* by virtue of owning a manufactured home in the manufactured home park while being the registered owner of the manufactured home. I also find that the registered owner was served with the notice to end tenancy, and none of the tenants or the registered owner disputed the notice in accordance with the *Act*.

With respect to the tenant's testimony that the tenancy agreement names a different person than the landlord's application, I find that the parties named in the landlord's application for dispute resolution are the same parties who entered into the tenancy agreement with the landlord, in that the name that appears to be inconsistent is the name signed by that tenant on the tenancy agreement.

I have also read the Decision of the previous Arbitrator, and I agree that the party named by the landlord in that dispute is not a party who entered into a tenancy agreement with the landlord. However, the *Act* permits service to an interested party.

57 (3) Subject to the rules of procedure established under section 9

(3) [*director's powers and duties*], the director may

- (a) deal with any procedural issue that arises,
- (b) make interim or temporary orders, and
- (c) amend an application for dispute resolution or permit an application for dispute resolution to be amended.

(4) If, in the director's opinion, another tenant of a landlord who is a party to a dispute resolution proceeding will be or is likely to be materially affected by the determination of the dispute, the director may

- (a) order that the other tenant be given notice of the proceeding, and

(b) provide that other tenant with an opportunity to be heard in the proceeding.

The interested party has been given notice of the proceeding, and was given an opportunity to be heard. In the circumstances I hereby amend the style of cause to include the registered owner as a respondent and the frontal page of this Decision shows the amendment.

I find that the landlord is entitled to an order of possession of the manufactured home site. Since the effective date of vacancy contained in the notice has passed, I grant the order on 5 days notice to the tenants and to the registered owner as an affected party and added respondent..

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an order of possession in favour of the landlord on 5 days notice to the tenants and to the registered owner as an affected party and added respondent.

I further grant a monetary order in favour of the landlord as against the tenants and the registered owner as an affected party and added respondent, pursuant to the *Manufactured Home Park Tenancy Act* in the amount of \$50.00 as recovery of the filing fee.

These orders are final and binding and may be enforced.

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: October 11, 2014

Residential Tenancy Branch

