



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FERNIE MOBILE HOME PARK
and [tenant name suppressed to protect privacy]

REVIEW DECISION

Dispute Codes OPC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for Cause; and to recover the filing fee from the tenant for the cost of this application.

The tenant's executor of her estate (the tenant's daughter) and landlord's agent (the landlord) attended the conference call hearing and gave sworn testimony and were given the opportunity to cross examine each other and witness on their evidence. For the original hearing the landlord served the tenant's daughter with the hearing documents twice; once on October 26, 2015 to an adult person who apparently resides in the mobile home and again to the tenant's daughter in person on November 09, 2015.

The original hearing was held on January 04, 2016 and the landlord was successful in obtaining an Order of Possession and a Monetary Order. The tenant filed an application for a review consideration of that decision on January 12, 2016 and a review hearing was granted on January 19, 2016.

The tenant provided documentary evidence to the Residential Tenancy Branch and to the landlord in advance of this review hearing and the landlord was served the documentation and Notice of Review Hearing by the tenant prior to this hearing. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Background and Evidence

The parties agreed that the tenant passed away on April 13, 2015. This tenancy had been in place for a number of years and a new tenancy agreement was put in writing between the deceased tenant and the landlord in 2000.

The landlord testified that the tenant's daughter moved into the unit with her children and a letter was sent to the tenant's daughter on April 28, 2015 to advise her that they must take steps to do the proper paperwork before they can occupy the mobile home. The tenant's daughter did not comply and a warning letter was sent on May 20, 2015. On June 01, 2015 the tenant's daughter informed the landlord that she would be selling the mobile home.

The landlord testified that the tenant's daughter and/ or other occupants continued to live in the mobile home and the tenant's daughter was served a One Month Notice to End Tenancy for cause in person on September 25, 2015.

At the previous hearing the tenant's daughter testified that she had filed an application to dispute the One Month Notice. The Arbitrator has written that the tenant's application was abandoned and therefore there is no dispute of the Notice to End Tenancy.

When the tenant's daughter applied for a Review Consideration of that decision the tenant's daughter was granted the review hearing on the basis that she did make an application to dispute the Notice and that it was not abandoned. The Tenant's daughter states that the Residential Tenancy Branch cancelled her application as abandoned even though her application fee was processed by a service agent.

The tenant's daughter testified that she did not abandon her application and was unaware that she had to return to the Service BC office to make any amendments to her application or provide any further documentation. The tenant's daughter testified that she thought she was given paperwork to serve to the landlord but referred only to the documentation for the review hearing and the Notice of Review Hearing.

The tenant's daughter was given time to sort through her documents to find any relevant information pertaining to the tenant's file which was abandoned. The tenant's daughter was unable to provide any documentation showing her file was duly processed and that a hearing package was given to her to serve upon the landlord as a cross application to be heard together with the landlord's application on January 04, 2016.

The landlord testified that he was not served any documentation concerning an application filed by the tenant prior to the hearing on January 04, 2016.

Analysis

I have carefully reviewed the information provided; the tenant's daughter did file an application on October 01, 2015 but according to the notes made on that file her application required some amendments and further documentation was required to process her fee waiver. An Information Officer with the Residential Tenancy Branch tried on numerous occasions to contact the tenant's daughter without success. The tenant's daughter did not return to the Service BC office to determine the progress of her application and due to this her application is clearly shown as having been abandoned.

I must therefore substantiate the findings of the original Arbitrator that the tenant's application to dispute the Notice to End Tenancy was abandoned and therefore there is no dispute of the Notice to End Tenancy. I therefore reiterate the finds of that decision in accordance to s. 40(5) of the *Act* which states:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the manufactured home site by that date.

Therefore, since the tenant did not follow through with a dispute of the Notice to End Tenancy, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the manufactured home site.

Conclusion

Due to the above and in accordance with s. 75(3) of the *Act* I confirm the original decision and orders.

The tenant must vacate the mobile home park as set out in the Order of Possession dated January 04, 2016.

The tenant must also comply with the Monetary Order dated January 04, 2016.

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: March 09, 2016

Residential Tenancy Branch

