



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding K.L. CHONG & ASSOCIATES LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC FF

Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlords on March 14, 2016. The Landlords filed seeking an Order of Possession for cause and to recover the cost of the filing fee.

The hearing was conducted via teleconference and was attended by two agents of the Landlord (the Landlords). No one was in attendance on behalf of the Tenant. The Landlords provided affirmed testimony that the Tenant was served notice of this application and this hearing in person on March 16, 2016 between 5:30 p.m. and 6:00 p.m. The Landlords submitted the Tenant was standing outside of his daughter's manufactured home park site when they handed him their application and hearing package in the presence of a witness.

Based on the undisputed evidence of the Landlords, I find the Tenant was sufficiently served notice of this hearing in accordance with Section 82(1) of the *Act*. The hearing continued to hear the undisputed evidence of the Landlords in absence of the Tenant.

Issue(s) to be Decided

Have the Landlords met the burden of proof to be granted an Order of Possession?

Background and Evidence

The undisputed evidence was the Tenant entered into a written month to month tenancy for a manufactured home park tenancy site that began on June 16, 2015. As per the tenancy agreement rent of \$530.00 was payable on or before the first of each month.

The Landlords testified that the Tenant was served his first 1 Month Notice to end tenancy on October 16, 2015. The Tenant and his sister met with the Landlords on January 16, 2016 and the parties mutually agreed the 1 Month Notice issued October 16, 2015 would be revoked and the Tenant's actions and the actions of the Tenant's guests would be reviewed again on January 16, 2016.

The Landlords asserted the actions of the Tenant and his guests have continued to escalate so on February 29, 2016 they served the Tenant a second 1 Month Notice to end tenancy. The Landlords stated they attempted to serve the second Notice in person; however, no one would answer the door so they posted the Notice to door in the presence of a witness.

The 1 Month Notice was issued February 29, 2016 pursuant to Section 40(1) of the *Act* listing an effective date of March 31, 2016 for the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- Tenant or a person permitted on the property by the tenant has:
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord
 - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
 - Put the Landlord's property at significant risk
- Tenant has engaged in illegal activity that has or is likely to
 - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- 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

In closing, the Landlords requested that the Order of Possession be granted.

Analysis

Given the evidence before me, in the absence of any evidence from the Tenant who did not appear despite being properly served with notice of this proceeding, I accept the undisputed version of events as discussed by the Landlords and corroborated by their documentary evidence.

Upon review of the 1 Month Notice to End Tenancy, I find the 1 Month Notice to be completed in accordance with the requirements of the *Act*. I further find the 1 Month Notice was served upon the Tenant in a manner that complies with section 81 of the *Act*.

Section 83 of the *Act* provides that a document given or served in accordance with section 81 of the *Act*, if posted to the door, is deemed to be received on the 3rd day after it is posted. Accordingly, I find the Tenant was deemed to have received the 1 Month Notice on March 3, 2016.

Section 40(4) of the *Act* stipulates that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

In this case the Tenant would have had to file their application for dispute no later than March 13, 2016. At the time the Landlords filed their application for an Order of Possession on March 14, 2016, the Tenant had not made application to dispute the 1 Month Notice.

Section 40(5) of the *Act* stipulates that 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 rental unit by that date.

As per the foregoing, I conclude the Landlords have met the burden of proof and I grant their request for an Order of Possession. The Landlords have been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**. In the event that the Tenant does not comply with this Order it may be enforced through Supreme Court.

Section 65(1) of the *Act* stipulates that the director may order payment or repayment of a fee under section 52 (2) (c) [*starting proceedings*] or 72 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$100.00** filing fee, pursuant to section 72(1) of the *Act*. The Landlord has been issued a Monetary Order in the amount of **\$100.00** which may be enforced through Small Claims Court after service upon the Tenant.

Conclusion

The Landlord was successful with their application and was granted an Order of Possession and a Monetary Order.

This decision is final, legally binding, and 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: April 28, 2016

Residential Tenancy Branch