



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR FF

Introduction

This hearing was convened in response to the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for Orders as follows:

- an order of possession for unpaid rent pursuant to section 48;
- authorization to recover the filing fee for this application from the tenant pursuant to section 65.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Preliminary Issue – Amendment to application to correct spelling of tenant's name

Section 57(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlords request to amend the application to correct the spelling of the tenant's name was granted and the name has been corrected in this decision.

Preliminary Issue - Service of Landlord's Application and Notice to End Tenancy

The tenancy for this manufactured home began approximately 9 years ago between the owner of the manufactured home C.W. (also the mother of the tenant) and the previous owners of the manufactured home park. The tenant T.W.G. has been living in the manufactured home for the previous 7 years. The current landlord took over ownership of the manufactured home park on July 7, 2016 and notified all tenants of the change of ownership and that future rent payments were to be made the new owners. The current monthly rent is \$744.00 payable on the 1st day of each month.

The landlord testified that on August 3, 2016 he served the tenant with the 10 day Notice to End Tenancy for unpaid rent, in the amount of \$744.00 that was payable on August 1, 2016, by posting a copy to the door of the rental premises. The landlord

submits that following service of the Notice, the tenant did not pay the outstanding rent indicated on the Notice within 5 days of receiving the Notice. On August 25, 2016 he served the tenant with the Application for Dispute Resolution and Notice of Hearing by posting a copy to the door of the rental premises.

The tenant's agent acknowledged service of the 10 Day Notice and Application for Dispute Resolution but contends that both items were not received until October 2, 2016. The tenant's agent submits that the tenant is severely disabled and incompetent and as such could not respond to the Notices. The tenant's agent submits that she was handed the stack of documents by the tenant when she went to check on him on October 2, 2016. The tenant's agent submits that she is the appointed power of attorney for the tenant and that the landlord was aware of this. The tenant's agent submits that as she was the power of attorney, the landlord should have served her with any legal documents. The tenant's agent submits that the previous owners of the manufactured home park were served with the power of attorney documents and the new owners should have received these upon the transfer of ownership. Further, she submits that she spoke to the new landlord in July 2016 and he was aware that she was the power of attorney.

The tenant's agent submitted an evidence package by fax to the Branch on October 14, 2016. This package was not available to the Arbitrator at the time of the hearing. The tenant's agent submits that this evidence was late as she did not receive Notice of the Hearing until October 3, 2016 and needed additional time to gather evidence. She submits that a copy of the package was also sent to the landlord by e-mail 1 week prior to the hearing.

The landlord submits they served the notice to the tenant in a method permitted under the Act. The landlord submits that they are not aware of any legal paperwork requiring service in any other manner or that the tenant's agent was appointed as the power of attorney. The landlord submits that in their interactions with the tenant he does not appear to be severely disabled. The landlord did not acknowledge receipt of the tenant's evidence package sent by e-mail.

Sections 81(g) and 82(2)(d) of the Act permit a landlord to serve documents (which includes a Notice to End Tenancy) and an application for dispute resolution (for an order of possession) by attaching a copy to a door at the address of which the person resides. Although the landlord served the tenant in a manner permitted under the Act, Residential Tenancy Branch, Policy Guideline #12 "Service Provisions", provided further guidance of service of documents on incompetent persons. In these cases, service is to

be effected by serving a copy of the document in a manner permitted under the Act to the person's representative.

I accept the testimony of the tenant's agent that the tenant is incompetent and that she is the appointed power of attorney. Although the evidence package submitted by the tenant's agent was not provided within the timelines established under the Rules of Procedure, I accepted the late evidence as it relates to the issue of service. The tenant's agent provided a copy of her appointment as the power of attorney in support of her testimony. I find that on a balance of probabilities it is more likely than not that the previous landlord was provided the legal documents with respect to the appointed power of attorney and provided an address for service of the representative.

I find that the tenant was not served with both the 10 day Notice to End Tenancy and the application for dispute resolution.

The landlord's application is dismissed. The landlord is ordered to serve all future documents to the address for service of the power of attorney as provided to the landlord in the hearing.

As the landlord was not successful in this application, the landlord is not entitled to recover the filing fee.

Conclusion

The landlord's application is dismissed.

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 17, 2016

Residential Tenancy Branch