



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dawson & Sawyer Capital Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR,FF

Introduction:

This was an application by the landlord for an Order for Possession pursuant to a Notice to End the tenancy for non-payment of rent dated August 3, 2016. The landlord and respondents attended the application.

Issues:

Is the landlord entitled to an Order for Possession?

Background and Evidence:

The landlord's agent L.M. testified that the current landlord acquired the mobile home park on July 7, 2016. Notices were circulated to each unit that rent was to be paid to the new owners. The landlord searched its records and found previous notices of rent increase directed to the "tenant" of this unit as Mr. R.Y. The landlord conducted a tile search in August 2016 and found D.O. was the registered owner of the unit. The landlord claimed it did not know who occupied the unit. As part of the sale of the park, ownership of three units was transferred to the new owners. This unit was not amongst those three units.

Although the landlords did not produce a written tenancy agreement they testified that the current rent is \$ 717.00 due in advance on the first day of each month without any security deposit. The landlord's agent L.M. testified that they served the Notice to End the tenancy on August 3, 2016 by posting it to the unit door on that day and the dispute resolution package by posting it to the door on August 25, 2016.

The landlord's agent L.M. testified that the "tenants" have not paid any rent for August, September or October of 2016.

R.Y. testified that he was the previous manager of the park employed by the previous owner. He testified that the respondent D.O. abandoned the unit over six years ago and that the previous owner acquired ownership of the unit. R.Y. assisted the owner by finding tenants to reside in the unit. D.G who currently resides in the unit was such a

tenant. R.Y. never resided in the unit and communicated with the new owners the complete history of the unit. R.Y. testified that he told D.G. who the new landlords were. R.Y. testified that he found out about this application because one of the new owners handed him a copy of the Dispute Package.

D.G. testified that he moved into the unit in April 2016. He was unsure who the new owners were so he stopped paying the rent. He claimed he paid the rent for August but because he asked a third party to do it for him, he's not sure that was done either.

M.R. one of the current owners testified on behalf of the landlord. He admitted that he had several conversations with R.Y. prior to and after purchasing the park. He denied that R.Y. ever informed him of the history of the unit or who resided in it. He relied on a previous Notice of rent increase with R.Y.'s name on it and a title search which indicated D.O. as the registered owner to determine who to name as respondents for this application. The landlord requested an Order for Possession.

Analysis:

The sections of the Act governing service of the Notice to End the Tenancy are:

How to give or serve documents generally

81 All documents, other than those referred to in section 82 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served in one of the following ways:

(a) by leaving a copy with the person;

(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

(i) as ordered by the director under section 64 (1) [*director's orders: delivery and service of documents*];

The sections of the Act governing service of the Dispute Resolution Package are:

Special rules for certain documents

82 (2) An application by a landlord under section 48 [*order of possession for the landlord*], 49 [*application for order ending tenancy early*] or 49.1 [*order of possession: tenancy frustrated*] must be given to the tenant in one of the following ways:

(a) by **leaving a copy with the tenant**;

(d) by attaching a copy to a door or other conspicuous place at the address at which the **tenant resides**;

(e) as ordered by the director under section 64 (1) [*director's orders: delivery and service of documents*].

I find that R.Y. was a credible witness. I accept his evidence. I find that he was agent of the previous landlord. I accept that he was never a tenant of the unit. I also accept his evidence that D.O. despite still being a registered owner of the unit on title, had not resided in the unit for over six years. Whether D.O. or the current landlord is now the owner of the unit, it is clear that neither of the respondents named in the application and Notice to End the tenancy are or were tenants during the relevant period in question: August 2016 to present date.

Accordingly I find that the landlord has either not named the correct respondents or served them correctly. Even if D.O. was still to be considered a "tenant", which I highly doubt, he was not served in accordance with sections 81 or 82 of the Act by attaching it to the door, as he did not reside and had not resided in the unit at the time of service. I find R.Y. was never a tenant but rather an agent of the previous landlord, and therefore was improperly named and served with the Notice and Dispute Package by attaching it to the door or handing it to him.

In view of all of the unique facts and findings in this matter, I have dismissed all of the landlord's applications.

Conclusion:

I have dismissed all of the landlord's applications. There will not be any recovery of the filing fee.

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 18, 2016

Residential Tenancy Branch