



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, FF, OPT, AAT, CNR

Introduction

This hearing was convened in response to applications pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”).

The Party named as “Tenant HB” applied on October 26, 2016 with an amendment dated November 18, 2016 for:

1. An Order cancelling a notice to end tenancy - Section 39;
2. An Order of Possession - Section 47; and
3. An Order allowing the Tenant or guests access to the unit - Section 24.

The Landlord applied on November 9, 2016 against both Tenant HB and the estate of Tenant NN for:

1. An Order of Possession - Section 48;
2. An Order for unpaid rent or utilities - Section 60; and
3. An Order to recover the filing fee for this application - Section 65.

Both Parties were each given full opportunity to be heard, to present evidence and to make submissions.

No person attended the hearing to represent the Estate of Tenant NN the second Party named as Respondent by the Landlord. The Landlord states that the estate of Tenant NN was served with the application for dispute resolution by registered mail on November 16, 2016. Given the Landlord’s evidence I accept that the estate of Tenant NN was served as required under the Act.

Issue(s) to be Decided

Is the Tenant HB a tenant under the tenancy agreement?

Is the notice to end tenancy valid?

Is the Landlord entitled to an order of possession and unpaid rent?

Background and Evidence

The following are undisputed facts: Prior to May 2, 2014 Tenant HB was a tenant under a tenancy agreement with Tenant NN. Following this date Tenant HB moved out of the unit and a new tenancy agreement was entered into solely with Tenant NN. At some point Tenant HB moved back into the unit but was not added to the tenancy agreement. Tenant NN became deceased on or about October 28, 2016. No rent was paid for November 2016 and on an unknown date the Landlord mailed Tenant HB and the Estate of Tenant NN a 10 day notice to end tenancy for unpaid rent (the "Notice").

Tenant HB states that the Notice was received on November 17, 2016 and that no rent has been paid for November or December 2016. Tenant HB states that he believes that he has rights to remain in the mobile home as he is the common law spouse of the deceased Tenant NN. Tenant HB states that he is in the process of filling out forms to pursue the matter of his rights to the mobile home and to become administrator of the estate of Tenant NN with the Supreme Court but that the matter is not yet before that court. Tenant HB states that he will be able to pay the rent for January 2017.

Analysis

Section 6 of the Act provides that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. Based on the undisputed evidence that the tenancy agreement signed May 2, 2014 does not include Tenant HB as a tenant I find that Tenant HB does not have any rights or obligations under the tenancy agreement. I therefore dismiss Tenant HB's application. As only Tenant NN was a tenant under the tenancy agreement I restrict the Landlord's claims to the Estate of Tenant NN.

Section 39 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent the tenant must, within five days, either pay the full amount of the arrears indicated on the notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy

Branch. Accepting Tenant HB's evidence of the date of receipt of the Notice and based on the undisputed evidence that the rent has not been paid for either November or December 2016 I find that the Notice is valid and that the Landlord is entitled to an order of possession. Further based on undisputed evidence of unpaid rent I find that the Landlord is entitled to unpaid rent for November and December 2016.

Although Tenant HB has not yet started any action in the Supreme Court, given the circumstances of the death of his common law spouse and the stated intentions of Tenant HB to pursue the matter at the Supreme Court I grant the Landlord an additional month of rent for January 2017 for a total of **\$1,641.00** and make the order of possession to the pad site effective January 31, 2017. I note that at the hearing the Parties were informed that the Landlord would be granted a monetary order to include January 2017 rent and in error that the effective date of the order of possession would be December 31, 2016.

As the Landlord has been successful I find that the Landlord is also entitled to recovery of the **\$100.00** filing fee for a total monetary entitlement of **\$1,741.00**.

Conclusion

I grant an Order of Possession to the Landlord effective 1:00 p.m. on January 31, 2017.

I grant the Landlord an order under Section 67 of the Act for the balance due of **\$1,787.50**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 14, 2016

Residential Tenancy Branch

