



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC

Introduction

This hearing dealt with a landlord's application for an Order of Possession for cause. The landlord was represented and one of the tenants appeared the hearing.

At the outset of the hearing I confirmed service of hearing documents upon each of the tenants. The landlord testified that each tenant was notified of this proceeding by registered mail sent to each of them on May 18, 2017. The landlord provided two registered mail tracking numbers as proof of service and testified that both of the registered mail packages were returned as unclaimed. The tenant acknowledged that she had seen a notice card from Canada Post in the mailbox and chose to ignore it. The tenant explained that she and her co-tenant became aware of the proceeding because the manufactured home park manager delivered the hearing documents to her adult son at the rental site in early June 2017. Section 83 of the Act provides that a person is deemed to have been served five days after mailing, even if the person refuses to accept or pick up their mail. Accordingly, I found the tenants deemed to be served with notification of the hearing and I continued to hear from the parties. Both parties were provided the opportunity to make relevant submissions, respond to the submissions of the other party, and ask questions.

Preliminary and Procedural Matters

On May 9, 2017 the landlord sent a 1 Month Notice to End Tenancy for Cause to the tenants via revised mail. The tenants did not pick up the registered mail and it was returned to sender. Also on May 9, 2017 the landlord filed this Application for Dispute Resolution seeking an Order of Possession on-line. Upon receipt of the landlord's Application for Dispute Resolution the staff of the Residential Tenancy Branch sent an email to the landlord's agent who filed the landlord's Application for Dispute Resolution on May 10, 2017, stating the following:

YOU INDICATED THAT THE 1 MONTH NOTICE TO END A TENANCY FOR CAUSE WAS SERVED VIA REGISTERED MAIL MAY 9. IF THIS IS CORRECT, THEN THE EARLIEST YOU CAN SUBMIT YOUR APPLICATION IS MAY 25, 2017. OF IF THE DATE ENTERED IS INCORRECT, PLEASE LOG BACK IN AND MAKE THE CORRECTION. IF THE NOTICE WAS MAILED MAY 9, THEN ON MAY 25 YOU CAN LOG BACK IN AND RE-SUBMIT THE APPLICATION.

[Reproduced as written in the Residential Tenancy Branch records]

Despite the email of May 10, 2017 no changes were made to the landlord's Application by May 17, 2017 and the landlord's Application was processed as is and set for hearing. Another email was sent to the landlord's agent via email by the Residential Tenancy Branch advising the landlord's agent of this. During the hearing, I confirmed that the Residential Tenancy Branch had the correct email address for the landlord's agent.

During the hearing, I confirmed that the landlord had sent the 1 Month Notice to the tenants via registered mail on May 9, 2017. As I informed the parties, a tenant in receipt of a 1 Month Notice has 10 days to file a Tenant's Application for Dispute Resolution to dispute the Notice. Since the 1 Month Notice was sent via registered mail on May 9, 2017 it would be deemed served on May 14, 2017 and the tenants would have until May 24, 2017 to file an Application for Dispute Resolution to dispute it. If the tenant does not file to dispute the 1 Month Notice then the landlord may file a Landlord's Application for Dispute Resolution to request an Order of Possession, as provided under section 48(2)(b) of the Act. Section 48(2) provides as follows:

(2) A landlord may request an order of possession of a manufactured home site in any of the following circumstances by making an application for dispute resolution:

(a) a notice to end the tenancy has been given by the tenant;

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

(c) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the manufactured home site at the end of the fixed term;

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

Aside from finding the landlord's application to have been filed very pre-maturely, I also noted that the 1 Month Notice before me was not in the current approved form. The approved form in use since December 2016 requires that the landlord provide specific "details of cause" with the notice. An out-dated Notice to End Tenancy may remain enforce if all of the required information is provided to the tenant, as provided in section 10(2) of the Act which provides: "Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used". In this case, the 1 Month Notice issued by the landlord does not provide any details of cause on the Notice or attached to the Notice. Accordingly, I noted that the 1 Month Notice would not likely have been enforced.

In light of all of the above, I dismissed the landlord's request for an Order of Possession. Having dismissed this Application for Dispute Resolution, the tenancy continues at this time. However, the landlord remains at liberty to issue another Notice to End Tenancy to the tenants as appropriate and make another Application for Dispute Resolution seeking an Order of Possession after allowing the tenants the opportunity to dispute it.

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: June 22, 2017

Residential Tenancy Branch