



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PEACE VALLEY MOBILE HOME PARK
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

This hearing was convened by way of conference call in response to a Tenant's Application for Dispute Resolution (the "Application") made by the Applicant on May 9, 2017 to cancel a notice to end tenancy for unpaid rent under the *Manufactured Home Park Tenancy Act* (the "Act").

The Applicant and Respondent appeared for the hearing and provided affirmed testimony. The Respondent confirmed receipt of the Application and the Applicant's documentary evidence which comprised a copy of the notice to end tenancy and a death certificate. The Respondent also confirmed that he had not provided any documentary evidence prior to this hearing. The hearing process was explained to the parties and no questions of the proceedings were asked. The parties were given a full opportunity to present evidence and make submissions to me.

Preliminary Matter

The Applicant in this case applied in the name of the estate of the deceased Tenant. However, the Applicant provided insufficient evidence, as detailed below, to prove he was legally entitled to make the Application on behalf of the Tenant's estate. Therefore, pursuant to my authority under Section 57(3) (c) of the Act, I have amended the Application to indicate just the name of the Applicant.

Issues to be Decided

Have the parties named on the Application established that a tenancy exists between them?

Background and Evidence

The Applicant testified the Landlord entered into a tenancy for the manufactured home site (the "site") with the Tenant and a written tenancy agreement was signed which started on October 17, 2011. Rent for the site was payable by the Tenant in the amount of \$450.00 on the first day of each month. The Applicant testified that he was the common law partner of the Tenant and he moved into the Tenant's manufactured home shortly after the tenancy started, namely on or about November 2011.

The Applicant testified that he had no dealings with the Landlord and it was the Tenant that paid rent and dealt with the Landlord directly throughout the tenancy. However, on January 24, 2017 the Tenant passed away. The Applicant explained that the Tenant's rent was being paid by a government agency directly to the Landlord; the Landlord received rent from the government agency for February 2017, but this stopped thereafter as the Tenant had passed away.

The Applicant testified that he was living alone in the manufactured home and did not have any money to pay rent as it was the Tenant that always paid rent. As a result, the Applicant invited a friend to stay with him who then paid the Landlord directly \$450.00 in rent for March 2017. The Applicant testified that things between him and his friend did not work out after which his friend left. The Applicant stated that for April 2017, a neighbour moved in with him, and the neighbour then paid the \$450.00 rent directly to the Landlord. Again, the relationship with the neighbour did not work out and the neighbour moved out by the end of April 2017.

The Applicant testified that he got sick and tired of getting in people to pay the rent and decided that he could not do it anymore because this was the responsibility of the Tenant's estate. The Applicant testified that because he does not have any money, the Landlord has not received any rent for May, June, and July 2017.

The Respondent confirmed that the tenancy was between him and the Tenant and that he had no direct involvement with the Applicant during the tenancy and since the Tenant passed away, even though he was aware that the Applicant was living with the Tenant in her manufactured home. The Respondent also confirmed that he had received rent from the Applicant's friend and neighbour but he had accepted this money as payment on behalf of the Tenant. The Respondent stated that he took no issue with the Applicant's occupancy of the rental site but his objective was to get the outstanding rental arrears.

The Applicant stated that he does not have any money to pay rent and if he did, he would be happy to start a new tenancy agreement with the Respondent. However, the Applicant asserted that it should be the Tenant's estate that pays the rent because, pursuant to the Act, the Tenant's estate is responsible for paying rent to the Landlord and not the Applicant.

The Applicant continued to submit that he was not a tenant in this tenancy and that he had made attempts to contact the Tenant's legal team as he was aware that the Tenant's sister was the beneficiary of the Tenant's estate. The Applicant stated that the Tenant's legal team was refusing to give him any information about what is happening with the Tenant's estate or any contact information for them.

The Landlord confirmed that he has not been able to ascertain who the Tenant's estate is and that he served a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the "10 Day Notice") to the door of the manufactured home on May 5, 2017 for May 2017 unpaid rent. The 10 Day Notice was provided into evidence by the Applicant and shows a different name for the Tenant and also details the Applicant's name.

The Applicant confirmed receipt of the 10 Day Notice on May 5, 2017 and stated that the Tenant's name that appears on it is incorrect as verified by the death certificate which the Applicant had provided into evidence. The Applicant stated that he was unable to forward the 10 Day Notice onto the Tenant's estate because he does not have any of the relevant contact details to do this.

The Applicant confirmed during the hearing that he was not a formal personal representative of the estate of the Tenant but that the estate are the ones responsible to pay rent. The Tenant explained that the matter of the estate will likely go to the Supreme Court and that is where he will be pursuing his rights as a common law partner of the Tenant's estate.

Analysis

Section 6(1) of the Act states that the rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement. The Act also provides the definition of a tenant which includes the estate of a deceased tenant. Having heard both parties' evidence provided to me in this hearing, I must first consider the issue of whether a tenancy in this dispute has been established pursuant to the Act before I am able to make any legal findings on the 10 Day Notice.

In this case, I am not satisfied that the Respondent Landlord, who had a tenancy with the Tenant, has a tenancy with the Applicant. The evidence before me is that the Applicant had no involvement in this tenancy, such as payment of rent, and only occupied the manufactured home as part of a common law relationship with the Tenant. The Respondent did not take any rent directly from the Applicant and this is further supported by the fact that rent paid to the Respondent after the Tenant passed away was given by third parties who have since left.

Based on the evidence before me, I find the parties have failed to establish that the Applicant is a tenant in this dispute because there is insufficient evidence before me that the Applicant is an estate party of the deceased Tenant. Therefore, in the absence of sufficient evidence that supports a landlord/tenant relationship between the Applicant and Respondent, I can only conclude that the Applicant is an occupant of the site. Occupants have no rights or responsibilities under the Act because they do not fall under the jurisdiction of the Act.

Conclusion

The parties named in the Application do not have a landlord/tenant relationship and have not entered into a tenancy that is governed by the Act. Therefore, I decline jurisdiction in this matter and I am unable to make any legal findings on the Application.

The Landlord still retains remedies under the Act to serve documents to the correct party in order to seek an end to the tenancy under the Act. The parties should also seek legal advice for alternative resolution options.

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

Dated: July 07, 2017

Residential Tenancy Branch