



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RETIRE WEST COMMUNITIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on September 19, 2018 (the "Application"). The Landlord sought an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated August 15, 2018 (the "Notice").

The Park Manager appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant.

The Park Manager advised that the Tenant passed away in March of this year. I have amended the Application to name the Estate of the Tenant and this is reflected in the style of cause.

I explained the hearing process to the Park Manager who did not have questions when asked. The Park Manager provided affirmed testimony.

The Landlord had submitted evidence prior to the hearing. Nobody had submitted evidence on behalf of the Estate of the Tenant. I addressed service of the hearing package and Landlord's evidence.

The Park Manager testified that he served the hearing package and evidence on September 21, 2018 by posting it on the door of the manufactured home. The Landlord had submitted a Proof of Service in relation to this. This includes a signed witness statement confirming service. The Landlord also submitted a photo of the documents posted on the door of the manufactured home.

Based on the undisputed testimony of the Park Manager, and the evidence submitted, I find pursuant to section 64(2)(c) of the *Manufactured Home Park Tenancy Act* (the "Act") that the Estate of the Tenant was sufficiently served with the hearing package and evidence. Further, I find the Landlord complied with the *Act* and Rules of Procedure in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of a representative of the Estate of the Tenant. The Park Manager was given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the Park Manager. I will only refer to the evidence I find relevant in this decision.

Issue to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlord and Tenant in relation to the manufactured home site. The tenancy started July 1, 2010 and was a month-to-month tenancy. The Park Manager advised that rent is currently \$350.23 per month due on the first day of each month.

As stated, the Park Manager advised that the Tenant passed away in March of this year. The Park Manager did not know who the personal representative of the Estate of the Tenant is. He said he has only had contact with the Tenant's brother who told him the family does not want anything to do with the manufactured home.

The Landlord had submitted a letter from the Tenant's brother. The brother indicates that he hopes the letter assists with the disposal of the manufactured home. It states that the family will not be pursuing Letters of Administration to administer the estate including the manufactured home and any personal effects in the home. It states that the family will not be pursuing any future claims to the personal effects within the home "and grant permission to dispose of the [home] and any personal effects within" it as the Park Manager sees fit.

The Park Manager testified that no rent has been paid for the manufactured home site since March of this year when the Tenant passed away. He advised that rent is outstanding from April of this year on.

Analysis

Section 37(1)(d) of the *Act* states that a tenancy ends if "the tenant vacates the manufactured home site or abandons a manufactured home on the site".

The definition of "tenant" in the *Act* includes the estate of a deceased tenant.

The *Manufactured Home Park Tenancy Regulation* (the "*Regulations*") sets out when abandonment occurs and states:

34 (1) A landlord may consider that a tenant has abandoned personal property if

...

(b) subject to subsection (2), the tenant leaves the personal property on a manufactured home site

(i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or

...

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

(a) the landlord receives an express oral or written notice of the tenant's intention not to return to the manufactured home site, or

(b) the circumstances surrounding the giving up of the manufactured home site are such that the tenant could not reasonably be expected to return to the manufactured home site.

Based on the undisputed testimony of the Park Manager, and the evidence submitted, I find the Tenant passed away in March of this year and therefore has not occupied the manufactured home for eight months. There is no evidence before me that anyone else has occupied the manufactured home during this time. Further, I accept the undisputed testimony of the Park Manager that no rent has been paid for the manufactured home site since March of this year.

I accept the undisputed testimony of the Park Manager that the letter submitted is from the Tenant's brother. I consider this letter to be written notice that neither the family of the Tenant, nor the Estate of the Tenant, intend to have any involvement with the manufactured home.

I find the circumstances meet the relevant portions of section 34 of the *Regulations* as set out above.

I find that the manufactured home has been abandoned as that term is used in section 37(1)(d) of the *Act*. I note that it is not because the Tenant is deceased that the manufactured home is abandoned as the definition of "tenant" in the *Act* contemplates death and includes the Estate of the Tenant. However, here neither the family nor the Estate of the Tenant has come forward to assume the rights and obligations of the Tenant under the tenancy agreement. In fact, the family of the Tenant has specifically stated that they have no intention of doing anything with the manufactured home or personal effects in it. In these specific circumstances, I find the

manufactured home has been abandoned and that the tenancy has therefore ended under section 37(1)(d) of the *Act*.

In the circumstances, the Landlord does not require an Order of Possession for the manufactured home site. The Landlord can consider the tenancy ended and can dispose of the manufactured home and personal effects of the Tenant in accordance with the *Act* and *Regulations*.

Conclusion

I find the manufactured home has been abandoned and the tenancy has therefore ended. The Landlord does not require an Order of Possession for the manufactured home site. The Landlord can consider the tenancy ended and can dispose of the manufactured home and personal effects of the Tenant in accordance with the *Act* and *Regulations*.

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: November 09, 2018

Residential Tenancy Branch