



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNRL, FFL

Introduction

The landlord seeks an order of possession for cause, a monetary order for unpaid rent, and a monetary order for the filing fee, pursuant to sections 40 and 48, 60, and 65, respectively, of the *Manufactured Home Park Tenancy Act* (the “Act”).

The landlord applied for dispute resolution on March 12, 2019 and a dispute resolution hearing was held on May 9, 2019. The landlord’s agents and the deceased tenant’s son (referred to as “the son” in this decision) attended the hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. I note that the landlord obtained substituted service for serving the Notice of Dispute Resolution Proceeding to the son, who attended the hearing but who, as explained in more detail below, I have found not to be a representative or agent of the deceased tenant’s estate.

I have reviewed and considered evidence submitted that met the requirements of the *Rules of Procedure*, and to which I was referred, but I have only addressed the evidence and arguments to the extent necessary to explain my decision.

Preliminary Issue: Deceased’s Son as Party to the Application

At the commencement of the hearing the son took issue with named on the landlord’s application. The landlord’s application named the son as the personal representative of the deceased’s estate. The tenant testified that he is the son of the deceased, who passed away in January 2017, but that he is not acting for the tenant, is not the executor of the estate, and has no legal interest in the property. He further explained that his father does not have an executor and that he left no last will and testament. The

son confirmed that he had paid rent on the site but has only visited the property maybe half a dozen times. No one lives in the property, including him. He further stated that it “not mine” and that he has “no possession” of it. The extent of the son’s involvement after his father’s death was dealing with the cremation.

The landlord’s agents explained that they assumed that the son was an agent or representative of the tenant’s site, given that they had been in communication with him about various issues involving the property, and that the son had paid rent.

Section 1 of the Act defines “tenant” to include (a) the estate of a deceased tenant, and (b) when the context requires, a former or prospective tenant.

In this case, while the son may have paid rent (except for more recently), I do not find on the totality of the facts and evidence that a new tenancy was created between the landlord and the son. If I had made such a finding then, as I explained to the parties during the hearing, the son would be considered a “tenant” and would be legally responsible for paying the rent. However, there is no evidence of the landlord attempting to create a new tenancy with the deceased tenant’s son.

Further, there is no evidence that the son is a representative of his father’s estate. Quite the opposite: he distances himself from all responsibility or legal relationship to whatever estate may exist in intestate. As such, I conclude that the son is a third party to these proceedings and has no standing. Accordingly, I have amended the style of cause (that is, the cover page) of this decision to reflect the absence of any standing. Given his involvement up until this point, however, a copy of this decision will be provided to him.

I find, based on the above, that the landlord’s claim specifically against the deceased tenant’s estate, via the son, is dismissed without leave to reapply. The landlord’s agent commented that the landlord is willing to forgo the unpaid rent in any event. That having been said, the landlord may wish to seek the advice of legal counsel in respect of pursuing a monetary claim against the deceased’s estate itself by some other means.

Issues

1. Whether the landlord is entitled to an order of possession.
2. Whether the landlord is entitled to compensation for the filing fee.

Background and Evidence

Briefly, the tenancy ended when the tenant died in January 2017. While the son, mentioned above, came in and out of the picture since then, the property has essentially sat vacant. Nothing has happened, and no legal representative or executor of the deceased tenant has come to occupy the manufactured home site.

Analysis

Section 37 of the Act includes several ways in which a tenancy may end. Specifically, section 37(1)(d) of the Act states that “A tenancy ends only if one or more of the following applies: [. . .] the tenant vacates the manufactured home site or abandons a manufactured home on the site.”

In this case, I find that the tenant abandoned the manufactured home site in January 2017, and as such I conclude that the tenancy ended, for the purposes of clarity, on January 31, 2017.

While the landlord sought an order of possession for cause, as there was no legal (or, for that matter, any practical) means by which the deceased could have complied with the One Month Notice to End Tenancy for Cause, I am reluctant to grant an order of possession on this basis.

However, I conclude that an order of possession may be granted under section 49.1 of the Act. Section 49.1(1) of the Act states that an order may be granted (a) ending a tenancy because [. . .] the tenancy agreement is otherwise frustrated, and (b) granting the landlord an order of possession of the manufactured home site.

In contract law, “frustration” is a legal doctrine where, if the entire performance of a contract becomes fundamentally changed without any fault by either party, the contract is considered terminated. Here, the tenant died, and at that point was unable to perform his obligations under the tenancy agreement. The tenancy agreement was, I conclude, frustrated.

Given the above and considering the oral and documentary evidence and submissions of the landlord and the third party, I hereby order that the tenancy ended on January 31, 2017, and I hereby grant the landlord an order of possession pursuant to section 49.1 of the Act.

Section 65 of the Act provides that an arbitrator may order payment of a fee by one party to a dispute resolution proceeding to another party. A successful party is generally entitled to recovery of the filing fee. As the applicant was partly successful I grant his claim for reimbursement of the filing fee in the amount of \$100.00.

I order that the landlord may retain \$100.00 of the deceased tenant's security deposit as compensation for the filing fee.

Conclusion

I hereby grant the landlord an order of possession, which is effective two days from the date of service. The landlord may serve the order of possession on the deceased tenant by either attaching the order to the tenant's front door or other place, or, by leaving a copy in the mailbox or mail slot, pursuant to section 83(c) or 83(d). This order may be filed in, and enforced as an order of, the Supreme Court of British Columbia.

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: May 11, 2019

Residential Tenancy Branch