



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 510718 B.C. LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL OPRM-DR**

Introduction

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* ("Act") for:

Authorization to recover the filing fees from the tenant pursuant to section 65; and
An order of possession and a monetary order for unpaid rent, by direct request pursuant to sections 48 and 60.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:35 a.m. to enable the tenant to call into this hearing scheduled for 11:00 a.m.

The landlord attended the hearing, represented by the owner, RK and an advocate, CD ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

In accordance with Rule 7.3 of the *Residential Tenancy Branch Rules of Procedure* ("Rules"), this hearing was conducted in the absence of the tenant.

The landlord's advocate gave evidence that she served the tenant with the Application for Dispute Resolution hearing package and evidence by registered mail on November 19, 2019. The landlord provided a Canada Post tracking number and receipt for the mailing, listed on the cover page of this decision. The landlord provided undisputed testimony that the actual tenant of mobile home park site died in 2018 and that the mobile home has been vacant since her death. As such, I find the tenant has been sufficiently served for the purposes of this *Act* pursuant to section 64.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent and compensation for unpaid rent?

Background and Evidence

The landlord gave the following undisputed testimony. This landlord purchased the mobile home park in 2009. Somebody moved their mobile home onto unit #3 without his or the park manager's approval. The landlord started collecting rent from this person. No tenancy agreement was signed with this person. For ease of reference, the person will be referred to as the tenant.

The landlord testified he asked his manager to get a tenancy agreement with the tenant in 2014 but he never did so. He discovered the tenant's name from other people residing in the mobile home park, although he received a notice of rent increase in the name of SW from the previous park owner indicating the rent would be increased commencing January 1, 2011. This was provided as evidence by the landlord.

On September 1, 2017, the tenant stopped paying rent. The landlord testified that his property manager assured him that he would either get the rent from the tenant or start proceedings to evict her, however that manager ran away overnight. The landlord gave further testimony that he once gave the tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities in Spring of 2018 however he did not follow through with this Notice. The landlord did not provide reasons for not following through.

The landlord testified that the tenant died on August 30, 2018. No obituary, death certificate or evidence of death was provided as evidence however the landlord's advocate advised me that she did an unsuccessful probate search under the tenant's name. After the tenant's death, the estate never paid rent on the mobile home pad or paid any of the arrears for previous months. The landlord became aware of the death in March of 2019 but he never sought to seek an end to the tenancy. The landlord continued to let the arrears accrue while the site remained unoccupied.

He thinks a person with the initials of BC is the son of the deceased tenant and appears to Act on behalf of the estate of the deceased tenant. He is unable to provide any evidence to confirm BC is the son of the deceased tenant although the last name is similar to the actual owners of the mobile home who died 20 years ago. The landlord relied on the information of the mobile home park's residents to ascertain the name of BC. BC tried to 'put others into' the mobile home and therefore a notice of rent increase

addressed to the son was drafted. The landlord confirmed that at the time, March of 2019 the mobile home was unoccupied and that he did not have a tenancy agreement with BC.

When queried as to why he allowed the tenant to not pay any rent from September 1, 2017 to her death in March of 2019 or anytime afterwards, the landlord responded that he was being lazy, ignored it and preferred to leave the effort to the guy managing the park who ran away. There were different managers and none of them had done an eviction before. Each of the managers 'disappeared'. He further testified that he was on an extended vacation, suffered from depression and couldn't handle the work. The landlord's advocate submitted that the landlord recently sold the mobile home park and that he is under contractual obligation to clear up the tenancy for this unit.

On October 11, 2019, the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the tenant's mobile home. The Notice indicates the tenant failed to pay rent in the amount of \$9,742.60 that was due on October 1, 2019. The effective date of the Notice is October 1, 2019. The landlord provided a direct request worksheet indicating no rent was paid whatsoever between September 1, 2017 and October 1, 2019. The party named as tenant on the Notice is [SW], (estate of). The alleged son BC was not named as the tenant's personal representative.

Analysis

Residential Tenancy Branch Policy Guideline PG-43 [naming parties] provides guidance to parties when commencing applications. Part D reads as follows:

D. NAMING AN ESTATE OF A PERSON WHO HAS DIED

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate must be named. If the deceased is a respondent to an application, the personal representative must be named and served. If the applicant does not know the name of the deceased's personal representative at the time of filing an Application for Dispute Resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate. The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant. The proper manner of naming the estate is as follows: John Smith, Personal Representative of the Estate of Mary Jones, Deceased.

I accept that the landlord's testimony that since the tenant died in March 2018, the mobile home has remained vacant. I also accept the landlord's testimony that he was unable to determine a personal representative for the estate of the deceased tenant and that the name of CB as the tenant's son is uncorroborated. Given this, I find that, **for the sole purpose of ending the tenancy**, the landlord has sufficiently served the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities upon the deceased tenant by posting it to the tenant's door on October 11, 2019 pursuant to section 64 of the *Act*. I deem it served 5 days after posting to the door, or October 16, 2019.

Sections 39(4) and (5) of the *Act* state:

- (4) Within 5 days after receiving a notice under this section, the tenant may
 - (a) pay the overdue rent, in which case the notice has no effect, or
 - (b) dispute the notice by making an application for dispute resolution.
- (5) If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant
 - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
 - (b) must vacate the manufactured home site to which the notice relates by that date.

I find that the tenant or her estate did not pay the overdue rent or dispute the Notice within 5 days and is therefore conclusively presumed to have accepted the tenancy ended on October 21, 2019, the earliest date the tenancy could end, corrected in accordance with section 46 of the *Act*. With the exception of the effective date, I find the Notice complies with the form and content provisions as set out in section 45 of the *Act*. As the effective date has passed, I grant the landlord and Order of Possession effective 2 days after service upon the tenant. As the tenant is deceased, in accordance with section 64, I order that the landlord be at liberty to serve the tenant with the Order of Possession by posting it to the door of the mobile home and such service be deemed good and sufficient.

Section 60 of the *Act* says:

Director's orders: compensation for damage or loss

60 Without limiting the general authority in section 55 (3) [*director's authority respecting dispute resolution proceedings*], if damage or loss results from a party not complying with this *Act*, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party. Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of

probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the Act, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

The landlord testified he knew since September 2017 that the tenant was not paying rent for the mobile home pad rental and did nothing to try to collect the rent. He admitted that he was being lazy, depressed and unwilling to make any effort to collect the rent or seek an end to the tenancy for unpaid rent. When the landlord discovered the tenant had died, the landlord continued to neglect collecting rent or seek an end to the tenancy.

In all cases where a landlord claims for damages for unpaid rent, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonable economic cost, as stated in Residential Tenancy Branch Policy Guideline PG-3 [Claims for Rent and Damages for Loss of Rent]. By neglecting, overlooking or ignoring the original tenant's unpaid rent from September 1, 2017 until her death one year later on August 30, 2018, I find the landlord has failed to mitigate his loss. I find the landlord's lack of interest in either collecting rent while the tenant was alive, ending it when she failed to pay it, or taking any steps to recover the mobile home site upon discovering the tenant had passed away clearly shows the landlord failed to mitigate his loss. I find it particularly problematic that the landlord wants to recoup rent from the estate of the deceased tenant knowing that the mobile home has been left unoccupied since her death and he knew that fact as early as March of 2019.

According to Black's Law Dictionary (sixth edition), ***Estoppel*** means that a party is prevented by his own acts from claiming a right to detriment of other party who was entitled to rely on such conduct and has acted accordingly. I find the landlord's claim to recover outstanding rent from the respondent party, the estate of the deceased, is both barred by the doctrine of estoppel and by his own actions in failing to mitigate the losses in allowing the unpaid rent to accrue both before and after the tenant died.

Lastly, although I previously found that the landlord had successfully served the tenant with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities **for the sole purpose of ending the tenancy**, I do not find the landlord has properly served the

respondent in this application with proper notice of his application for unpaid rent. The respondent was improperly named.

As stated earlier, PG-43 indicates the applicant must properly name the respondent in proceedings whereby the respondent is a person who has died.

*Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate must be named. If the deceased is a respondent to an application, **the personal representative must be named and served.***

For the above reasons, the landlord's application for compensation is dismissed.

Pursuant to section 65 of the *Act*, the determination of whether to award the applicant a filing fee is discretionary upon the arbitrator and I decline to award this to the landlord.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant.**

Pursuant to section 64, the landlord is at liberty to serve the tenant with the Order of Possession by posting it to the front door of the manufactured home site and such service be deemed good and sufficient.

The remainder of the landlord's application is dismissed.

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: January 13, 2020

Residential Tenancy Branch