



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPT, FFT

Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on January 20, 2020 (the "Application"). The Tenant applied for an order of possession, pursuant to the *Manufactured Home Park Tenancy Act* (the "Act")

The Tenant, the Tenant's Advocate B.H., and the Landlord's Agents W.P. and R.D. attended the hearing at the appointed date and time and provided affirmed testimony.

At the beginning of the hearing, the parties acknowledged receipt of their respective application package and documentary evidence. No issues were raised with respect to service or receipt of these documents during the hearing. Pursuant to section 82 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Tenant entitled to an order of possession, pursuant to Section 47 of the *Act*?

Background and Evidence

The Tenant stated that her tenancy began August 1, 2003. The Landlord's Agents stated that they were uncertain as to the exact start date of the tenancy, but that there was a change in ownership and that the new Landlord signed a new tenancy agreement with the Tenant on January 1, 2012. Both parties testified and agreed that currently, the Tenant is required to pay rent in the amount of \$414.08 to the Landlord on the first day of each month.

The Tenant is seeking an order of possession as the Landlord had blocked the Tenant's entry to the rental site with a truck from December 19, 2019 until January 25, 2020. The Tenant stated that while her rental site is currently vacant, she continues to have a shed, a deck, lawn furniture and turf on the rental site. The Tenant stated that she is afraid to return to the rental site as the Landlord no longer wants her on the property.

The parties agreed that the Tenant had moved her mobile home on or before July 1, 2017. Since removing her mobile home, the Tenant stated that she has been subleasing the rental site to other occupants on a short-term basis. The Tenant stated that she continues to pay the rent to the Landlord each month, despite the fact that she has removed her mobile home. The Tenant stated that the Landlord has not been accepting her rent payments since October 2019.

The Landlord's Agents responded by stating the Tenant abandoned the rental site on or before July 1, 2017 which effectively ended her tenancy. The Landlord's Agents stated that the Tenant has not received written permission from the Landlord to assign a sublease or to operate a short-term vacation rental business on the site. The Landlord's Agents feel as though the Residential Tenancy Branch ("RTB") does not have jurisdiction over this matter since the tenancy ended beyond the 2-year limitation period to file for dispute resolution.

If successful, the Tenant is seeking the return of the filing fee paid to make the Application.

Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

The Tenant is seeking an order of possession as a result of the Landlord blocking the entryway of her rental site with a truck from December 19, 2019 until January 25, 2020.

Section 47(1) of the Act states that;

A tenant who has entered into a tenancy agreement with a landlord may request an order of possession of the manufactured home site by making an application for dispute resolution.

(2) The director may grant an order of possession under this section to a tenant before or after the date on which the tenant is entitled to occupy the manufactured home site under the tenancy agreement, and the order is effective on the date specified by the director.

(3) The date specified under subsection (2) may not be earlier than the date the tenant is entitled to occupy the manufactured home site.

The Landlord's Agents stated during the hearing that the Tenant had moved her mobile home from the rental site on or before July 1, 2017. As such, the Landlord is of the impression that the Tenant had abandoned the rental site, ending the tenancy.

Section 37 of the Act outlines when a tenancy ends;

(1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 38 *[tenant's notice]*;

(ii) section 39 *[landlord's notice: non-payment of rent]*;

(iii) section 40 *[landlord's notice: cause]*;

(iv) section 41 *[landlord's notice: end of employment]*;

(v) section 42 *[landlord's notice: landlord's use of property]*;

(vi) section 43 *[tenant may end tenancy early]*;

(b) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 89 (2) (a.1), requires the tenant to vacate the manufactured home site at the end of the term;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates the manufactured home site or abandons a manufactured home on the site;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended;

(g) the tenancy agreement is a sublease agreement.

(2) [Repealed 2003-81-7.]

(3) If, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the manufactured home site on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

During the hearing, the parties testified that the Tenant has continued to pay rent each month when due to the Landlord. The Tenant acknowledged that she has been subleasing the rental site for short term accommodations. While the Landlord's Agents felt as though the Tenant has breached the Act by not gaining proper written permission from the Landlord, I find that the Landlord has not taken the proper steps to end the tenancy in accordance with the Act.

In this case, I find that the Act makes no mention to the fact that a Tenant must keep their mobile home on the site during the tenancy. I accept that the Tenant removed her mobile home sometime on or before July 1, 2017, however, she continued to pay the rent to the Landlord each month and has some personal possession on the site. As such, I find that it is unreasonable for the Landlord to consider the rental site abandoned.

In light of the above, I find that the tenancy continues and that the Tenant has the lawful right to occupy the rental site. Should the Landlord feel as though the Tenant has breached the Act, they are at liberty to serve a proper notice to end tenancy in accordance with the Act.

During the hearing, the parties agreed that the Tenant currently has full access to the rental site. As such, I find that the Tenant does not require an order of possession. Section 24 of the Act speaks to the Tenant's right to access;

(1) A landlord must not unreasonably restrict access to a manufactured home park by (a) the tenant of a manufactured home site that is part of the manufactured home park, or (b) a person permitted in the manufactured home park by that tenant.

I find that the Tenant is entitled to the recovery of the \$100.00 filing fee paid to make the Application. The Tenant is permitted to deduct this amount of one (1) future rent payment.

Conclusion

The Landlord breached the Act by restricting the Tenant's access to the rental site. The tenancy continues until it is ended in accordance with the Act. The Tenant is granted the return of the \$100.00 filing fee which can be deducted from one (1) future rent payment.

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: February 21, 2020

Residential Tenancy Branch