



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* for an Order of Possession for cause pursuant to section 48; and authorization to recover the filing fee for this application, pursuant to section 65.

The respondent did not attend this hearing, although I left the teleconference hearing connection open until 11:39 a.m. in order to enable the respondent to call into this teleconference hearing scheduled for 11:00 a.m. The landlord, who is the manager of this property, attended the hearing and 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. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the respondent was sent a copy of the dispute resolution hearing package ("Application") and evidence by way of registered mail on March 12, 2020. The landlord provided the tracking information in their evidence. In accordance with sections 81, 82, and 83 of the *Act*, I find that the respondent deemed served with the Application and evidence on March 17, 2020, five days after mailing. The respondent did not submit any written evidence for this hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The landlord provided undisputed testimony regarding the following facts. The landlord testified that she took on the role of manager of the manufactured home park in August of 2019. The previous manager had informed her to follow up on the outstanding issues with the tenancy in this dispute.

On August 28, 2019, the landlord served the tenant with an upkeep letter as she had noticed the lawn was not mowed, in addition to other issues such as vehicle fluid in the driveway. On August 30, 2019, another occupant in the manufactured home park CC contacted her to inform her that the original tenant, ET, had passed away 8 to 9 years ago, and that CC was appointed the Executor and Trustee. ET was a tenant in this manufactured home park since July of 1996. The landlord included a copy of ET's Will that was obtained from CC, but testified that she could not verify the validity of this document.

CC informed the landlord that since ET had passed away, she had allowed all three of her children to occupy the manufactured home at various times. The landlord testified that she had investigated the matter, and discovered that CC's son had previously occupied the rental unit, and was evicted by the landlord by way of a 1 Month Notice in 2018. The landlord testified that the pad rental of \$350.00 per month has been paid by CC in ET's name.

The landlord discovered that CC's daughter, the respondent in this dispute, has been residing in the manufactured home without the consent or knowledge of the landlord. The landlord served CC's daughter with a 1 Month Notice on March 12, 2020 for this reason, as sublets are not allowed per the park rules.

The landlord confirmed that CC was not served with a copy of this application for dispute resolution or the 1 Month Notice. The landlord testified that she has not received confirmation that ET is deceased, or whether CC is legally entitled to possession or occupation of ET's property.

Analysis

The definitions of a "tenancy", "tenant", and "tenancy agreement" are outlined in the following terms in section 1 of the Act:

"tenancy" means a tenant's right to possession of a rental unit under a tenancy agreement;

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

"tenant" includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

I find that the named respondent in this dispute is not a tenant as defined by the *Act*. Although there is evidence to support that the named tenant in this tenancy has been deceased for some time, the landlord testified that she did not have confirmation of this. Furthermore, the possible executor and trustee named in the Will of the tenant ET was not in attendance at this hearing, nor was she served with a copy of the application for dispute or notice to end tenancy.

As the only parties in attendance at this hearing were myself and the landlord, and as I am not satisfied that the tenant or estate of the tenant were served with the application for dispute resolution, I dismiss this application for an Order of Possession with leave to reapply.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. For this reason, the landlord's application for recovery of the filing fee is dismissed without leave to reapply.

Conclusion

I dismiss the landlord's application for an Order of Possession with leave to reapply.

The landlord's application to recover the filing fee is dismissed without leave to reapply.

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 5, 2020

Residential Tenancy Branch