



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bridgview Capital Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, FFL

Introduction

I was designated to hear this matter pursuant to section 51 of the *Manufactured Home Park Tenancy Act* (the “Act”). The landlord applied for:

- an order of possession for cause, pursuant to sections 40 and 48 of the Act; and
- an authorization to recover the filing fee for this application pursuant to section 65.

The applicant’s representative PP (the landlord) attended at the date and time set for the hearing of this matter. The respondents (tenants) did not, although I waited until 1:42 P.M. to enable them to connect with this teleconference hearing scheduled for 1:30 P.M. The landlord was given a full opportunity to be heard, to present affirmed 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 applicant and I were the only persons who had called into this teleconference.

I accept the landlord’s testimony that the tenants were served with the application and evidence (the materials) by registered mail sent to the tenants’ address on May 12, 2020 (the tracking numbers are on the cover page of this decision). One package was sent to each tenant. I find the tenants were served the materials in accordance with section 82(2)(b) of the Act.

Section 83(a) of the Act provides that a document served in accordance with section 82 of the Act is deemed to be received if given or served by mail on the 5th day after it was mailed. Given the testimony of the landlord, I find the tenants are deemed to have received the materials on May 17, 2020.

In accordance with Rule of Procedure 7.3, this hearing was conducted in the absence of the tenants.

Preliminary Issue – Named Applicant

The landlord affirmed the manufactured home park opened in 1996 and it was named at the time MH. In 2009 the park name changed to GH. The landlord and owner of the park is BC. The named applicant PP is the representative of BC.

Section 57(3)(c) of the *Act* allows me to amend the application, which I have done to remove the representative's name and record the correct legal name of the landlord.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession for cause?
2. recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the landlord, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claim and my findings are set out below.

The landlord affirmed tenant EL, now deceased, entered into a manufactured home tenancy in July 1996. The tenancy agreement was submitted into evidence. Monthly rent is \$350.00 and is due on the first day of the month. There are no arrears.

The landlord heard from other tenants in 2018 that EL died. The landlord sent letters (submitted into evidence) to the estate of EL on May 23 and May 25, 2018 asking for proof of ownership of the manufactured home on the site rented to EL.

The landlord affirmed tenant CI, replying on November 07, 2019 to the letters dated May 23 and May 25, 2018, confirmed EL died, presented EL's last will and affirmed she now owns the manufactured home. CI also lives in the same manufactured home park, but in a different manufactured home on a different site.

EL's last will, dated February 16, 2011, indicates:

I GIVE AND BEQUEATH free of all estate duties, probate fees and taxes as follows:

- (i) To my friend CI, my mobile home located at No. [tenancy address] and \$300.00 for her own use absolutely;

The landlord submitted into evidence a manufactured homes registry dated June 06, 2019 indicating the manufactured home at the tenancy address is registered to EL. The landlord believes CI did not update the manufactured home ownership document.

The landlord affirmed CI pays the rent every month with a postal money order under EL's name. Copies of postal money orders dated August 01, August 29, September 27, November 11, 2019, March 02, April 01 and May 01, 2020 were submitted into evidence. A rent receipt dated December 01, 2019, stating rent was paid by CI, was also submitted into evidence.

The landlord affirmed CI has been subletting the manufactured home site to multiple subtenants.

CI's son lived in the manufactured home and was served a one month notice to end tenancy on May 02, 2018. CI's son moved out, but the manufactured home remained on the same site.

The landlord affirmed CI informed her that CA, her daughter, has been subletting and living in the manufactured home since August 30, 2019. The landlord has seen CA living in the manufactured home. CA also stated to the landlord that she has been living in the manufactured home unit since August 30, 2019.

The tenancy agreement entered into evidence and signed by EL states:

I agree not to assign or sublet the premises without first obtaining written consent of the Landlord or his Manager or Agent, such consent not to be unreasonably or arbitrarily withheld.

The landlord affirmed CI knows sublet is not permitted because the same term is in the tenancy agreement for her site.

GH's park rules and regulations prohibits subletting:

2.Mobile homes may not be rented, loaned or used for any purpose other than that granted in the original application for space. Sub-letting is not permitted.

The landlord affirmed the One Month Notice to End Tenancy for Cause (the Notice) was posted on the tenant's door on February 02, 2020. The effective date of the Notice is March 02, 2020 and was addressed to 'Occupant, daughter of CI and Estate of EL'.

A copy of the Notice was provided. The ground to end the tenancy cited in the Notice was: "Tenant has assigned or sublet the rental site without landlord's written consent."

The Notice specifies:

The owner of the mobile home is the Estate of Elise Taylor, the executor to this estate needs to contact myself to verify ownership. There is no subletting allowed.

The landlord entered into evidence a text message sent to CA on February 02, 2020. It states:

You are living in the park illegally and the eviction notice stands. The same thing happened with your brother last year who lived there before you. Your mother knows the rules and it is now out of my hands.

CA replied on the same day:

So how am I living here illegally there's forms I can fill out which u gave us (SIC)
And it's no illegal unless I'm paying rent

The landlord applied for an order of possession on May 05, 2020.

The landlord affirmed she would like to recover the filing fee for this application and for a previous application.

Analysis

Based on the undisputed testimony of the landlord, EL's tenancy agreement and final will, I find EL signed a tenancy agreement, died, CI inherited the manufactured home that belonged to EL and subleases the site assigned to EL.

Based on the undisputed testimony of the landlord and text message sent by CA, I find CA is occupying the manufactured home that belongs to CI. Both CA and CI are named respondents in this application.

Residential Tenancy Branch Policy Guideline 43 states:

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.

As such, the landlord properly named the occupant (CA) in the Notice and CA and CI as respondents of this application.

Based on the undisputed testimony of the landlord, I deem the tenants were served the Notice on February 05, 2020, three days after it was posted to their door. I find the tenants were served the Notice in accordance with section 81(g) of the Act.

Section 40(4) and (5) of the Act states:

(4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.

(5) If a tenant who has received a notice under this section does not 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 by that date.

Section 40(5) is mandatory, and I do not have discretion as to its application. Based on the landlord's testimony I find that the tenants did not file an application to dispute the notice within 10 days, or at all.

The Notice is in accordance with Section 45 of the Act, as it is signed and dated by the landlord, gives the address of the rental site, states the effective date, the grounds for end tenancy and is in the approved form.

It is not necessary for me to determine if the tenants acted as alleged by the landlord on the Notice due to the application of sections 40(4) and (5) of the Act. As such, I make no findings as to the truth of the landlord's allegations about the conduct of the tenants.

The tenants are conclusively presumed to have accepted that the tenancy ended on the corrected effective date of the Notice (March 05, 2020) and must remove the manufactured home from the site. As this has not occurred, I find that the landlord is entitled to an order of possession effective two days after service, pursuant to section 48(2)(b) of the Act.

I warn the tenants that they may be liable for any costs the landlord incurs to enforce the order of possession.

As the landlord was successful in her application, I find that the landlord is entitled to recover the \$100.00 filing fee. Recovery of filing fees for previous applications are not allowed, pursuant to section 65 of the Act.

Conclusion

Pursuant to section 48(2)(b) of the Act, I grant an order of possession to the landlord effective two days after service.

I order that the landlord serve a copy of this decision and attached order of possession on the tenants immediately upon its receipt, in accordance with section 81 of the Act.

Pursuant to section 65 of the Act, I grant the landlord a monetary order in the amount of \$100.00.

The landlord is provided with this order in the above terms and the tenants must be served with this order as soon as possible. Should the tenants fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 12, 2020

Residential Tenancy Branch