



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Rascall Trucking Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Code: OPT

Introduction

In this dispute, the tenant seeks an order of possession pursuant to section 47(1) of the *Manufactured Home Park Tenancy Act* (the “Act”). The tenant filed an application for dispute resolution on October 4, 2020 and a dispute resolution hearing was held on October 15, 2020. The tenant attended the hearing and were given a full opportunity to be heard, present affirmed testimony, make submissions, and call witnesses.

Regarding service of the Notice of Dispute Resolution Proceeding package, the tenant testified that he attempted to serve the landlord’s agent (hereafter the “landlord”) at 3:30 PM on October 5, 2020 in person. He handed the landlord the package, but the landlord refused to accept them from the tenant. On October 8, 2020, in a further effort to serve the material, the tenant sent the landlord the Notice of Dispute Resolution Proceeding package by way of Canada Post Registered Mail. The registered mail tracking number was provided in evidence.

Based on the above undisputed testimony of the tenant I find that the landlord was served with the Notice of Dispute Resolution Proceeding in compliance with sections 52(3) and 82 of the Act and with the *Rules of Procedure*.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issue of the tenant’s application.

Issue

Is the tenant entitled to an order of possession?

Background and Evidence

By way of background, the tenant's manufactured home is located within an industrial yard owned and operated by the landlord. Within the yard there are five mobile site pads and two caretaker residents. The yard is used mainly as a storage area for motorhomes and mobiles. One of the mobile site pads is on which the tenant's manufactured home sits.

The tenancy began on November 1, 2018, and monthly rent is \$450.00. No written tenancy agreement was submitted into evidence.

The landlord has restricted access to the manufactured home by locking the gates to the yard, preventing the tenant from entering the yard and accessing his home. Indeed, in one instance, the tenant had to call the police to help get home out of the yard; he has been locked in. Further, the landlord has restricted access to the tenant's storage area, which is used exclusively by the tenant to store some of his work tools and personal property. The tenant added that the landlord has prevented the tenant from removing his personal property (e.g., tools) from the property.

While outside the jurisdiction of the Act, apparently the landlord's locking of the gates and restricting access was in response to the tenant's employment or labour relations-related grievances; the tenant is an employee of the landlord.

In support of his application the tenant submitted copies of communication between the parties, along with other correspondence related to the mobile home sites.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 47 of the Act, which is the section under which the tenant seeks an order of possession, reads as follows:

- (1) 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.

In this dispute, the tenant testified that the landlord has restricted access to both his manufactured home and to his storage area. For the purposes of this application I find that the storage area constitutes part of the tenancy.

Section 24(1) of the Act ("Tenant's right of access protected") states that

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.

Section 25(1) of the Act ("Prohibitions on changes to locks and other access") reads as follows:

A landlord must not change locks or other means that give access to a manufactured home park unless the landlord provides each tenant with new keys or other means that give access to the manufactured home park.

Here, the landlord has unreasonably restricted the tenant's access to the manufactured home site by placing locks and chains on the three gates. And, by that action, they have changed the locks or other means that give access to the manufactured home without providing the tenant with new keys or other means that give access to the manufactured home park and the manufactured home, including the tenant's storage area.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has met the onus of proving the grounds on which he seeks an order of possession.

Therefore, I grant the tenant an order of possession, which is effective immediately.

I also make the following orders, pursuant to section 55(3) of the Act:

1. that the landlord must not restrict the tenant's access to the manufactured home park common areas, to the manufactured home site, and to the manufactured home, pursuant to section 24(1) of the Act;
2. that the landlord must not change locks or other means that give access to the manufactured home park unless the landlord provides the tenant with new keys or other means that give access to the manufactured home park, pursuant to section 25(1) of the Act; and,
3. that the landlord must not prevent or interfere with the tenant's access to the tenant's personal property, pursuant to section 20(3)(b) of the Act.

Conclusion

I grant the tenant an order of possession, which must be served on the landlord and which is effective immediately. If the landlord fails to comply with the order the tenant may file and enforce the order in 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 Act.

Dated: October 15, 2020

Residential Tenancy Branch