



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Smithers Riverside Trailer Park
Ltd and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **FFL, OFL, OL**

Introduction

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

Authorization to recover the filing fee for this application from the tenant pursuant to section 65;

An order to end the tenancy because the tenancy agreement is frustrated pursuant to section 49.1; and

An order for the tenant to remove his personal property from the site.

The tenant did not attend the hearing although I left the teleconference hearing line open throughout the hearing which lasted approximately 40 minutes. 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 monitoring system that the landlord and I were the only people who had called into this teleconference.

The landlord attended the hearing, represented by DVR ("landlord"). The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that she sent the tenant the Notice of Dispute Resolution Proceedings package by registered mail on October 1, 2020 and provided a tracking number for the mailing, recorded on the cover page of this decision.

I noted the tenant's address was listed as a PO Box, however the landlord testified that there is no home delivery of mail in this rural community – all residents are required to pick up their mail from the post office. The address for delivery of the notice was the tenant's residence, followed by a PO Box number, which is requirement when sending things by registered mail.

The landlord testified that the package was delivered on October 13, 2020 and the tenant's signature was collected by the postmaster. Pursuant to section 64(2) of the Act, I am satisfied the tenant was effectively served with the Notice of Dispute Resolution Proceedings package on October 13, 2020. This hearing was conducted in the absence of the tenant in accordance with Rule 7 of the Residential Tenancy Branch Rules of procedure.

Issue(s) to be Decided

Can the landlord recover the filing fee?

Is the tenancy frustrated?

Should the tenant be ordered to remove his personal property?

Background and Evidence

The landlord provided the following undisputed testimony. The month to month tenancy began on January 1, 2013 when the park was under different ownership. The landlord took over management of the property in February of 2016. Rent was originally set at \$260.00 per month but is now \$320.00 per month.

The tenant is the owner of the manufactured home however he does not live in it. It has been mostly vacant since the landlord has managed the park, but the landlord believes it was occupied for approximately one year from the summer of 2018 to September of 2019. In September 2019, there was a fire in the manufactured home and since then, the manufactured home has sat vacant. The tenant has continued to pay rent for the pad rental up until September 2020, however he stopped paying rent for October and November.

The landlord testified that after months and months of telling the town's building department that he will fix the manufactured home to make it habitable, the town's building inspector placed a "Do not occupy" sign on the door of the manufactured home on September 28, 2020.

The landlord testified that the pad is not unrentable due to the fire, however no new manufactured home can be moved onto the pad until the tenant's manufactured home is removed. The tenant has not told the landlord he intends on ever occupying it or renting it out since the fire since the fire over a year ago.

The landlord testified that before the fire in 2019, the manufactured home suffered from sagging ceilings due to water damage. Now, after the fire, she estimates the value of the manufactured home to be negligible. The tenant did do some work to rip out

destroyed parts of the manufactured home, however it has been months since any work has been done to it.

The landlord testified that besides the manufactured home, the tenant has stored tools in a shed on the site and left an unlicensed vehicle. The landlord wants the tenant to remove those items from the manufactured home park as well as the manufactured home, itself.

Analysis

Section 49.1 of the Act states:

Order of possession: tenancy frustrated

49.1 (1) A landlord may make an application for dispute resolution requesting an order

(a) ending a tenancy because

(i) the manufactured home site is not capable of being occupied by a manufactured home, or

(ii) the tenancy agreement is otherwise frustrated, and

(b) granting the landlord an order of possession of the manufactured home site.

Based on the landlord's testimony that the manufactured home site can be occupied by a manufactured home, I find the tenancy is not frustrated. I do find, however, that the tenancy has ended pursuant to section 37(1)(d) which states that a tenancy ends if the tenant vacates the manufactured home site or abandons a manufactured home on the site. Pursuant to section 55(3) of the Act, I grant the landlord an order of possession of the site effective 2 days after service upon the tenant.

Based on the undisputed evidence of the landlord, I find the tenant has abandoned his personal property, contrary to section 34(1)(b) of the *Manufactured Home Park Tenancy Regulations* ("Regs") since the tenant left personal property on a manufactured home site that for a continuous period of one month, he has not ordinarily occupied and for which he has not paid rent. The landlord is obligated to treat the tenant's personal property as abandoned and follow the regulations set out in part 6 of the *Regs*.

The landlord's application seeking an order that the tenant remove his personal property is dismissed without leave to reapply.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$100.00**.

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: November 27, 2020

Residential Tenancy Branch