



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Grappa Investment Corporation and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes **OPC, FFL**

Introduction

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

- An Order of Possession for Cause pursuant to sections 40 and 48; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 65.

No representative of the tenant's estate attended this hearing, although I left the teleconference hearing connection open until 11:30 a.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. 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 system that the landlord and I were the only ones who had called into this teleconference.

The landlord was represented at the hearing by property manager, KH and park owner, LP. The property manager, KH testified that she served the tenant with the Notice of Dispute Resolution Proceedings by posting a copy of it to the door of the manufactured home on October 23, 2020. I deem the tenant to be served with the Notice of Dispute Resolution Proceedings on October 26, 2020, three days after it was posted to the tenant's door in accordance with sections 82 and 83 of the Act.

This hearing was conducted in the absence of the tenant in accordance with rule 7.3 of the Residential Tenancy Branch Rules of Procedure.

Preliminary Issues

The landlord repeated its name on the Application for Dispute Resolution. In accordance with the landlord's request and section 57(3), I amended the landlord's name to the one recorded on the cover page of this decision.

Issue to be decided

Is the landlord entitled to an order of possession?

Can the landlord recover the filing fee?

Background and evidence

The landlord gave the following undisputed testimony.

The landlord testified that the original tenant, the owner of the manufactured home located in the manufactured home park, died. The landlord testified she does not know the identity of the tenant's personal representative, although the tenant did have adult children.

Since the tenant's death, the site has been occupied by the tenant's son who has brought in guests who have disturbed other tenants in the park, threatened other tenants and using drugs. Complaint letters from other tenants living in the park were entered into evidence by the landlord.

On October 10, 2020, the landlord served the tenant with a One Month Notice To End Tenancy for Cause by posting it to the front door of the manufactured home. A copy of the notice was provided as evidence. The notice is dated October 8, 2020 and provides an effective (move-out) date of November 9, 2020. The reason for the notice is as follows:

- the tenant has allowed an unreasonable number of occupants in the unit/site/property/park
- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
- tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park
- tenant has not done required repairs of damage to the unit/site;

Analysis

Residential Tenancy Branch Policy Guideline PG-43 states at part D:

D. NAMING AN ESTATE OF A PERSON WHO HAS DIED

*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.*

No person attended the hearing to identify themselves as the personal representative of the deceased. Has a personal representative attended and acknowledged this as their role, the application would be amended in accordance with PG-43. Since this did not happen, I exercised my discretion to proceed with the landlord's Application for Dispute Resolution without an amendment to the name of the respondent.

A "tenant" includes the estate of a deceased tenant, in accordance with section 1 of the *Manufactured Home Park Tenancy Act*. I find the tenant was served with the notice to end tenancy for cause on October 13, 2020, three days after posting to the door in accordance with section 81 and 83 of the Act.

Pursuant to section 40(4) of the Act, a tenant may dispute the notice by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Pursuant to section 40(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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the manufactured home site by that date.

The tenant has not made the application pursuant to section 40(4) of the Act within ten days of receiving the 1 Month Notice. In accordance with section 40(5) of the Act, the tenant's failure to take this action within ten days led to the end of this tenancy on the effective date of the notice. Although the effective date of November 9th is earlier than the earliest date permitted under the applicable section; the effective date is automatically changed to November 30, 2020 in accordance with section 46 of the Act.

The tenant has not vacated the manufactured home by the corrected effective date of November 30th and I find that the landlord is entitled therefore to an Order of Possession effective 2 days after service.

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.

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: January 12, 2021

Residential Tenancy Branch