



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kozel Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the landlord: OPC, FFL
For the tenant: CNC, OLC, MNDCT, FFT

Introduction

The Applicant/Respondent O.K. (hereinafter “O.K.”) filed an Application for Dispute Resolution on February 4, 2021 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). Additionally, they seek compensation for monetary loss, compliance with the legislation and/or tenancy agreement, and reimbursement of the Application filing fee.

The Applicant/Respondent business (hereinafter “K.H.”) filed a cross-Application for Dispute Resolution (the “cross-Application”) on February 8, 2021 seeking an order of possession of the rental unit. This is following their service of the One-Month Notice to the other party on January 26, 2021. Additionally, they applied for reimbursement of the cross-Application filing fee.

The matter proceeded by way of a hearing pursuant to s. 67(2) of the *Manufactured Home Park Tenancy Act* (the “Act”) on May 7, 2021. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing. Both parties confirmed receipt of the evidence prepared by the other. On this basis, the hearing proceeded.

Preliminary Issue

On January 26, 2021, K.H. served the One-Month Notice at the dispute address. The One-Month Notice provided the name of O.K. as the executor of the estate of the deceased tenant. The indicated date by which O.K. must move out was by March 31, 2021.

The Notice of Dispute Resolution lists K.H. as the landlord, and O.K. as the tenant. There is no evidence to show O.K. is the estate representative of the deceased tenant, neither through will nor proof of authority for them to act in this matter. As such, there is no proof the tenancy devolved to O.K. as executor of the estate, and the tenancy does not transfer to a third party in this way.

K.H. presented a copy of the tenancy agreement between themselves and the deceased tenant. This agreement shows the start of the tenancy in 2017. The Applicant/Respondent O.K. is not listed on the agreement as a tenant. A two-page addendum forms part of the agreement. The Addendum consists of park rules and regulations. This contains the following provisions:

- Absolutely no other person(s) other than those listed on the first page of the . . . Manufactured Home site tenancy agreement as the “Tenant(s)” may reside on the site without written approval from [K.H. manager].
- ALL [manufactured home park] tenants must have a signed Manufactured Home site tenancy agreement that specifies the number of individuals occupying the site.

In their written submission, K.H. asserted that O.K. “has continued to occupy the Manufactured Home Site” since the deceased tenant’s passing in 2020. O.K. is not a tenant, as shown by the tenancy agreement between the parties.

A tenancy agreement is defined in the *Act* as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and facilities. This definition does not include a license to occupy.

Further, s. 2 of the *Act* specifies the *Act* applies to tenancy agreement, manufactured home sites and manufactured home parks. This does not include a license to occupy.

K.H. presented they accepted rent from the deceased tenant's estate from October through to March 2021. They presented proof in the form of a letter to O.K. that explicitly states such payments were accepted on a use and occupancy basis only and do not create a tenancy agreement.

Given that the *Act* applies only to tenancy agreements, and there is no proof of a tenancy agreement in place between K.H. and O.K., I find the *Act* does not apply to this situation. The *Act* is specific that "tenancy agreement" does not include a license to occupy. The fact that K.H. accepted rent payments – especially since they specified "use and occupancy only" – does not create a tenancy agreement between the parties.

In their written and oral submissions, O.K. attempted to show there was an implied agreement in place between the parties given that K.H. was aware of O.K. occupying the manufactured home site. They also attempted to show fraud with the deceased tenant's signature appearing on the existing copy of the tenancy agreement presented by K.H. here. I give no weight to these submissions and instead find as fact that K.H. accepted payments on a use and occupancy status only.

I find the documentary evidence and oral testimony shows there is no tenancy agreement --- no contract – between O.K. and K.H. The definition of "tenancy agreement" in the *Act* does not include a license to occupy. Further, there is no proof that O.K. had the permission from K.H. to use the manufactured home site. There was no permission in place, and no devolving of the estate to O.K. which thereby granted permission, neither express nor implied, to use the unit.

I cannot presume that a tenancy was created. Given the circumstances surrounding the occupation of the premises, I find the evidence weighs against finding that there is a tenancy. Between O.K. and K.H., there is not a landlord-tenant relationship, and there are no contractual rights under the *Act*.

In sum, the provisions of the *Act* do not apply to the situation at hand. Based on these facts and an application of the legislation, I do not have jurisdiction to hear this Application.

Both parties are free to seek appropriate legal remedy in this matter.

O.K. presented that s. 67 of the *Act* applies in their Application for monetary compensation, where they suffered monetary loss in this situation, by K.H.'s non-

compliance with the *Act*. With no jurisdiction to hearing this Application, I am unable to determine or order compensation.

The *Act* gives me the authority to order the repayment of a fee for an Application for dispute resolution. Since I do not have jurisdiction, I am unable to award recovery of the filing fee.

Conclusion

Having declined jurisdiction to hear this matter, I dismiss this Application by O.K. in its entirety, without leave to reapply.

Similarly, with no jurisdiction, I dismiss the cross-Application by K.H. in its entirety, without leave to reapply.

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

Dated: May 21, 2021

Residential Tenancy Branch