



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

File #910070482: CNR, FFT

File #210064416: OPR, FFL

Introduction

The Applicant seeks the following relief under the *Residential Tenancy Act* (the “RTA”):

- An order pursuant to s. 46 to cancel a 10-Day Notice to End Tenancy signed April 22, 2022 (the “10-Day Notice”); and
- Return of his filing fee pursuant to s. 72.

The Respondent files a cross-application seeking the following relief under the *Act*:

- An order for possession pursuant to s. 55 after issuing the 10-Day Notice; and
- Return of its relief pursuant to s. 72.

The Applicant also filed an amendment to their claim in which they seek an order pursuant to s. 62 of the *Act* that the Respondent comply with the *Act*, tenancy agreement, and/or the Regulations.

G.W.S. appeared as the Applicant. He was assisted by his son, G.W.J., who spoke on his behalf as his agent (“Agent”). T.M. appeared as counsel for the Respondent (“Counsel”). Counsel advised that he acts on behalf of the executor to the Respondent’s estate and further advised that the Respondent passed away on April 12, 2021.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. The parties confirmed that they were not recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

Both parties advised that their applications and evidence were served on the other party. The parties acknowledged receipt of the other's application materials and raised no objections with respect to service. Pursuant to s. 71(2) of the *RTA*, I find that the parties were sufficiently served with the other's application materials based on their acknowledged receipt of the same.

Preliminary Issue – Applicant's Claim

The Applicant filed an amendment including a claim that the Respondent comply with the *Act*, tenancy agreement, and/or the regulations.

The primary issue in the cross-applications is the validity of the 10-Day Notice. The Applicant's amendment is ancillary to this primary issue and may not be relevant in any event if the tenancy ends as orders made under s. 62 are only relevant to ongoing tenancies.

Pursuant to Rule 2.3 of the Rules of Procedure, claims in an application must be related to one another. Where they are not sufficiently related, I may dismiss portions of the application that are unrelated. Hearings before the Residential Tenancy Branch are generally scheduled for one-hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

I find that the Applicant's amendment under s. 62 is not sufficiently related to the primary issue in the parties' claims. Accordingly, I dismiss it pursuant to Rule 2.3. Should the tenancy continue, it will be dismissed with leave to reapply. If the tenancy ends, it will be dismissed without leave to reapply.

Issues to be Decided

- 1) Should the 10-Day Notice be cancelled? If not, is the Landlord entitled to an order for possession?
- 2) Are either of the parties entitled to the return of their filing fee?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this decision.

The parties in this matter advised that the subject property is an acreage located in a rural area of the BC. The Applicant indicates that he moved onto the property sometime in 1991 and lived in a manufactured home which he owned. The Applicant further advised that he had an arrangement with the Respondent that he would pay rent of \$100.00 per month and cover his own utilities, though he stopped paying rent some 15 years ago. The Applicant indicates that the Respondent told him rent would no longer be necessary as the Applicant was a caretaker at the property. The Agent indicates that his father is of advanced age.

Counsel advises that the estate has not received rent from the Applicant since the Respondent passed away. It was confirmed that there was no written tenancy agreement with respect to the arrangement between the Applicant and the Respondent. Counsel further advised that the property is not zoned or divided into a mobile home park. No evidence was provided indicating a security deposit had been paid.

Counsel indicates that the 10-Day Notice was issued as the Applicant failed to pay rent to the Respondent estate. A copy of the 10-Day Notice was put into evidence by the parties. Counsel indicates that the 10-Day Notice was personally served on the Applicant and the Applicant acknowledges its receipt on April 25, 2022.

As indicated above, the Applicant admits that no rent had been paid, though emphasized this was due to the arrangement he had with the deceased. Counsel argued that there is no evidence of any agreement that rent would not be paid and that the estate was unaware of any such agreement.

I am told by Counsel that the deceased had an attorney acting on his behalf starting in 2014. Counsel advised that after speaking with the attorney, she indicated that no rent had been paid by the Applicant to the Respondent while she acted on his behalf.

I asked if there were any submission with respect to whether the *RTA* or the *Manufactured Home Park Tenancy Act* (the "*MHPTA*") applied. Counsel argued that the circumstances fall within the ambit of both, though argues that the distinction between both is not relevant in light of the similarities between s. 46 of the *RTA* and s. 39 of the *MHPTA*. The Applicant and the Agent provided no submissions with respect to which act applied.

Analysis

The Applicant seeks to cancel the 10-Day Notice. The Respondent seeks an order for possession pursuant to the 10-Day Notice.

Section 2 of the *RTA* sets that it applies to tenancy agreements, rental unit, and other residential property. Section 2 of the *MHPTA* sets that it applies to tenancy agreements, manufactured homes, and manufactured home parks. Policy Guideline #9 states the following with respect to the matter:

Tenancy agreement is defined in the *Residential Tenancy Act* (RTA) as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

Tenancy agreement is defined in the *Manufactured Home Park Tenancy Act* (MHPTA), 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 services and facilities. It does not include a licence to occupy.

Under the MHPTA, a manufactured home is defined as a structure, other than a float home, whether or not ordinarily equipped with wheels, that is

- designed, constructed or manufactured to be moved from one place to another by being towed or carried, and
- used or intended to be used as living accommodation.

(Emphasis in the original)

Counsel did not dispute that the Applicant resided in the manufactured home nor did he dispute that the manufactured home was owned by the Applicant. Given this, I find that if either act applies, it would be the *MHPTA*. It is undisputed that the Applicant resides in a manufactured home that he owns himself. A “rental unit” is defined within the *RTA* is an accommodation intended to be rented to a tenant, which by implication means that the landlord can grant possession of it to a tenant through a tenancy agreement. The similar provision within the *MHPTA* is a “manufactured home site”, which is a site that can be rented to a tenant for the purpose of being occupied by a manufactured home. In this instance, the Respondent could not be said to be permitting possession of the

manufactured home as it has no right to its possession. It is owned by the Applicant. If anything is being rented, it would be the site where the manufactured home is parked.

Despite my finding that the *MHPTA* applies, I note that the relevant portions of both acts are substantially similar to one another. To the extent that the parties filed their applications under the *RTA*, I amend them such that the claims are made pursuant to the *MHPTA*.

The present circumstances raise the potential issue with respect to whether there is a landlord-tenant relationship under the present circumstances. I note that Policy Guideline #9 sets that a presumption of tenancy exists if a tenant has exclusive possession of the subject site, subject to the landlord's right to access it and the tenant pays a fixed amount of rent.

There is no dispute that the Applicant has exclusive possession of the site. The Applicant admits to paying rent in a fixed amount of \$100.00 per month, though says that these payments ended after he and the Respondent agreed to amend this arrangement some 15 years ago. I make no findings with respect to whether there was an agreement that the Applicant would stop paying monthly rent in consideration for maintenance services provided by him to the Respondent. Therefore, the presumption of tenancy is triggered, which is not displaced as neither party argued that there was no tenancy as defined under either act. I find based on this that there is a tenancy under the present circumstances.

Pursuant to s. 39(1) of the *MHPTA*, where a tenant fails to pay rent when it is due, a landlord may elect to end the tenancy by issuing a notice to end tenancy that is effective no sooner than 10-days after it is received by the tenant.

I find that the Applicant was personally served with the 10-Day Notice in accordance with s. 81 of the *MHPTA* on April 25, 2022, as acknowledged by the Applicant at the hearing.

As per s. 39(2), a notice issued under s. 39 must comply with the formal requirements of s. 45, which are as follows:

- 45** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
 - (b) give the address of the manufactured home site,

- (c) state the effective date of the notice,
- (d) except for a notice under section 38 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

There are two issues with the 10-Day Notice. First, it was issued under s. 46 of the *RTA* rather than s. 39 of the *MHPTA*. This error is not necessarily fatal as I am satisfied that very little turns on that distinction, given the similarity of the sections and the fact that both use the same Residential Tenancy Branch form (RTB-30). One may argue that it is not a proper notice under the *MHPTA* as it was issued under the *RTA*, however, I make no findings on this point.

The second issue is that the 10-Day Notice provides a road name as the address for the manufactured home site. There is no legal identifier, lot number, or otherwise. Counsel indicates that he was uncertain on the address given as it was a rural property and provides a copy of the property's title, arguing the correct address would be the legal parcel description. The Agent provided an address, including lot number and address along the relevant highway.

I find that the 10-Day Notice does not comply with s. 45 of the *MHPTA* as it does not state the address of the manufactured home site and lists a general road name. The 10-Day Notice neither lists the legal parcel description nor does it list the address as provided by the Agent. It is simply the name of a road. I accept that this is a rural property, however, even rural properties have addresses. The error is fundamental to the requirements set out under s. 45 and it would not be reasonable to correct the error pursuant to s. 61. As the 10-Day Notice does not comply with s. 45, it is not a proper notice under s. 39 and is of no force or effect.

Accordingly, the Respondent's application for an order for possession is dismissed and the Applicant's application cancelling the 10-Day Notice is granted.

Conclusion

The 10-Day Notice is of no force or effect as it does not comply with s. 45 of the *MHPTA*. The Respondent's application for an order for possession is dismissed and the Applicant's application cancelling the 10-Day Notice is granted. The tenancy shall continue until it is ended in accordance with the *MHPTA*.

As the Applicant was successful, I find that he is entitled to the return of his filing fee and that the Respondent is not. Accordingly, I order pursuant to 65(1) of the *MHPTA* that the Respondent pay \$100.00 to the Applicant for his filing fee.

It is the Applicant's obligation to serve the monetary order on the Respondent. If the Respondent does not comply with the monetary order, it may be filed by the Applicant with 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 *Manufactured Home Park Tenancy Act*.

Dated: June 22, 2022

Residential Tenancy Branch