



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 51 of the *Manufactured Home Park Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. The landlords applied on May 27, 2022 for:

- an order of possession, having issued a 10 Day Notice to End Tenancy for Unpaid Rent;
- a monetary order for unpaid rent, having issued the 10 Day Notice;
- an order of possession, because the rental unit/site is uninhabitable due to unforeseen events or the tenancy is otherwise frustrated; and
- recovery of the filing fee.

The hearing teleconference was attended by the landlords but not the tenant. The landlords (CD and MD) were affirmed, and given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Landlord CD testified that she served the Notice of Dispute Resolution Proceeding and a copy of the #RTB-12L-O *Other Issues* form on the tenant in person on July 9, 2022, and that landlord MD witnessed the service. Based on the landlord's undisputed affirmed testimony, I find the materials served on the tenant on July 9, 2022, in accordance with section 82 of the Act.

Preliminary Matter

The landlords have applied for an order of possession and a monetary order for unpaid rent, both based on service of a 10 Day Notice. There is no 10 Day Notice in evidence, though landlord CD testified they had submitted one. Section 39 of the Act requires a 10

Day Notice to comply with the form and content requirements of section 45. Without a notice before me, I am unable to determine whether the notice complies with section 45. Therefore, I dismiss, with leave to reapply, the landlords' claims for the order of possession and monetary order related to the 10 Day Notice.

Issues to be Decided

- 1) Are the landlords entitled to an order of possession because the rental site is uninhabitable due to unforeseen events, or the tenancy is otherwise frustrated?
- 2) Are the landlords entitled to the filing fee?

Background and Evidence

The landlords provided the following particulars regarding the tenancy. It began about 15 years ago, and rent is \$230.00 a month, due on the first of the month. The landlords testified that the tenant is renting the site, not the manufactured home.

On the #RTB-12L-O *Other Issues* form, the landlords have indicated they want an order of possession because the rental site is uninhabitable due to unforeseen events, or the tenancy is otherwise frustrated. On the form, the landlords indicated this is being requested because: "If the tenant abandons the trailer, I have an estimate from a contractor what the cost would be to remove it and clean lot [sic]."

The landlords testified that the tenant has no power or water, that the manufactured home should be condemned, that the tenant has not paid rent for almost 2 years, and that the owner wants the tenant out so she can rent the site to someone else. The landlords submitted there is no way the tenant could move the manufactured home because it is falling down around him. The landlords testified there is a water leak on the property, and that the tenant's manufactured home is in the way of them finding the source of the leak.

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.

(2) If the director is satisfied that a manufactured home site is not capable of being occupied as a manufactured home site or the tenancy agreement is otherwise frustrated, the director may make an order

(a) deeming the tenancy agreement ended on the date the director considers that performance of the tenancy agreement became impossible, and

(b) specifying the effective date of the order of possession granted to the landlord.

[Policy Guideline](#) 34 explains that a contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible.

The landlords have testified that the tenant has no power or water, that the manufactured home should be condemned, that the tenant has not paid rent for almost 2 years, that the owner wants the tenant out so she can re-rent out the site to someone else, and the tenant's manufactured home is impeding the landlords' ability to locate the source of a water leak on the property.

The landlords did not refer me to any documentary evidence submitted in support of their claim.

Based on the foregoing, I find the landlords have not provided sufficient evidence to prove, pursuant to section 49.1, that the site is not capable of being occupied by a manufactured home, or that the tenancy agreement is otherwise frustrated.

Therefore, I find the landlords are not entitled to an order of possession; the tenancy will continue until it is ended in accordance with the Act.

As the landlords are unsuccessful in their application, I decline to award the filing fee.

Conclusion

The landlords' application is dismissed.

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: December 2, 2022

Residential Tenancy Branch