



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAHANA HOLDINGS
and [tenant name suppressed to protect privacy]

REVIEW HEARING DECISION

Dispute Codes

OPC FFL

Introduction

This review hearing of the original proceeding was reconvened in response to a successful application for Review filed by the tenant. The original Application for Dispute Resolution (the “Application”) under the *Manufactured Home Park Tenancy Act* (the Act) was brought by the landlord for an Order of Possession pursuant to an undisputed Notice to End for Cause and for which the landlord was granted such Order. This hearing was ordered to determine if the original decision and order should be confirmed, varied or set aside. The Style of Cause (title page) has been augmented in respect to the respondent’s name in this matter.

Both parties attended the conference call review hearing. The parties were Ordered to serve the other and the Branch in advance with any and all evidence that they intended to rely upon at the review hearing. The tenant acknowledged not providing any such submissions in advance of this hearing. The landlord provided testimony and tracking information of Canada Post mail registration service to the confirmed *mailing address* of the respondents and which mail consisted of all of their evidence to date and previously submitted to this matter and before the original hearing. The parties were informed I would view the online tracking information for the mail, which confirmed the landlord’s submission it was returned as “refused” by the recipient. Based on the foregoing as reflected in the style of Cause I find that the tenant was sufficiently served in accordance with **Sections 64, 82 and 83** of the Act.

The tenant in attendance informed the hearing that respondent RF died and their estate is pending.

The parties were provided opportunity to mutually resolve their dispute to no avail.

Issues to be Decided

Should the original decision and order be confirmed, varied or set aside?

Background and Evidence

The landlord testified that on August 01, 2018 they served the tenant a 1 Month Notice to End Tenancy for Cause by posting a copy to the door of the home on the site and also sending the original by *registered mail* to the tenant's mailing address as had been provided by the tenant. The landlord provided the registered mail tracking information into evidence and testified that this mail went unclaimed and ultimately was returned. The landlord testified that all such mail ever sent to the tenant has been unclaimed or refused. In this hearing the tenant confirmed their mailing address as the address the landlord has been using for the tenant.

The landlord testified that an original request of the landlord to the tenant was for them to attend to the maintenance of the home site as the site was a "complete mess" due to its abandonment and lack of any yard maintenance which garnered complaints of unsightly premises by other occupants. Ultimately the home site came to the attention of the local City By-law personnel. The landlord testified their attempts to hold the tenant accountable for the issues went wanting and returned. The landlord provided they ultimately were forced to issue the Notice to End for lack of any meaningful response from the tenant.

The tenant testified that no one has lived on the home site for a year. However the parties agreed the rent for the home site is being satisfied each month and the parties have encountered each other on occasion. The parties agreed there has not been water to the home for some time due to compromised plumbing under the home. The landlord testified that as a result they were compelled to shut off the water access. The tenant testified they have been and remain living off of the home park, however they endeavour to move back into the home park in the foreseeable future but are "on holidays" until December 18, 2018.

In respect to the landlord's multiple mailings to the tenant, the tenant testified that they don't routinely pick up their mail, except for once a month. The tenant testified they have never received the landlord's multiple mailings however were aware of the landlord's concerns and those of the City. The tenant testified they had sought the help of another occupant of the home park to maintain the site. However, the landlord testified that individual vacated and the landlord took it upon themselves to tidy the home site.

Analysis

On preponderance of the abundance of evidence from the landlord and the testimony of the tenant I find as follows.

The landlord of this matter served the tenant with the Notice to End on August 01, 2018, by registered mail to the valid mailing address of the tenant as was provided by them. The landlord filed a copy of the tracking information. The registered mail was returned to the landlord marked "unclaimed". I accept that subsequent other mailings by registered mail have also gone unclaimed, which I find likely was due to the tenant's own acknowledgement of not picking up their mail. The evidence is that the last registered mailing from the landlord, following the

tenant's successful Review Consideration, even when ordered by the reviewing Arbitrator to be provided to the tenant, was then *refused* by the tenant.

Residential Tenancy Policy Guideline 12 provides that, where a document is served by registered mail, the refusal of the party to either accept or pick up the registered mail, does not override the deemed service provision. Where the registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing. In this matter I find the evidence clearly supports that the landlord has repeatedly done what they were required and legally obligated to do in this matter and in respect to the subject Notice to End. On the other hand I find that the tenant, through their choices avoided these efforts. I find the landlord served the tenant the subject 1 Month Notice to End. It was available to the tenant to dispute the Notice within the legally prescribed time to do so but they did not. Therefore the Act states that as a result the tenant was legally presumed to have accepted the tenancy's end.

As a result of all the above, I find the evidence supports the original Decision in this matter. I find that **Section 75** of the Act states that following a review hearing the director may confirm the original Decision or Order and in this matter I find it appropriate to do so. Therefore, pursuant to **Section 75** of the Act **I confirm** the original Decision and Orders in this matter.

Conclusion

The original Decision and Orders are confirmed.

This Decision is final and binding

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 05, 2018

Residential Tenancy Branch