



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

OPR, MNR

Introduction

This hearing proceeded by way of Direct Request Proceeding, pursuant to section 67(2)(b) of the *Manufactured Home Park Tenancy Act (Act)*, and dealt with an Application for Dispute Resolution by the Landlord for an Order of Possession and a monetary order.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding document which declares that at 3:15 p.m. on December 08, 2010, the Landlord sent the Notice of Direct Request Proceeding to the female Respondent at the service address on the Application for Dispute Resolution. The Landlord submitted Canada Post documentation that corroborates this statement. On the basis of this information, I find that the female Respondent has been served with the Notice of Direct Request Proceeding in accordance with section 82(1) of the *Act*.

The Landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding document which declares that at 3:15 p.m. on December 08, 2010, the Landlord sent the Notice of Direct Request Proceeding to the male Respondent at the service address on the Application for Dispute Resolution. The Landlord submitted no documentation that corroborates this statement, although he attached the Canada Post documentation showing that he mailed a package to the female Respondent to his Proof of Service. On the basis of this information provided, I am unable to conclude that the male Respondent has been served with the Notice of Direct Request Proceeding in accordance with section 82(1) of the *Act*.

Section 82 of the *Act* determines the method of service for the Notice of Direct Request Proceeding document. The Landlord has applied for a monetary Order which requires that the Landlord serve each respondent as set out under section 82(1) of the *Act*. In this case only one of the two Respondents has been served with the Notice of Direct Request Proceeding document in accordance with section 82(1) of the *Act*. Therefore, I find that the request for a monetary Order against both Respondents must be amended to include only the female Respondent who has been properly served with Notice of this Proceeding. As the male Respondent has not been properly served the Application for Dispute Resolution as required by section 82(1) of the *Act*, the monetary claim against him is dismissed without leave to reapply.

In determining that the monetary Order against the male Respondent should be dismissed, I was influenced, in part, by the fact that the male Respondent has not signed the tenancy agreement and the Landlord, therefore, has submitted insufficient evidence to show that the male is obligated to pay rent.

The Landlord has requested an Order of Possession naming both Respondents. Section 82(2) of the *Act* determines that the Landlord may leave a copy of the Application for Dispute Resolution related to a request for an Order of Possession at the tenant's residence with an adult who apparently resides with the tenant. I find that the male Respondent was likely served with the Application for Dispute Resolution pursuant to section 82(2) of the *Act*, in regards to the Order of Possession.

I find, however, that the request for an Order of Possession naming the male Respondent should be dismissed, as the Landlord has submitted insufficient evidence to show that he entered into a tenancy agreement with the Landlord.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent pursuant to sections 48 and 60 of the *Act*.

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Proceeding for the each Tenant
- A copy of a residential tenancy agreement which was signed by the female Tenant, which indicates that the tenancy began on April 01, 1994 and that the rent of \$25.00 per month is due on the first day of each quarterly term
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent which was signed by the Landlord on July 08, 2010, which declared that the Tenants must vacate the rental unit by July 23, 2010 as the Respondents failed to pay rent in the amount of \$810.00 that was due on July 01, 2010. The Notice states that the tenancy will end unless the Tenant pays the rent or submits an Application for Dispute Resolution seeking to set aside the Notice within five days of receiving the Notice.
- A copy of the signed Proof of Service of the 10 Day Notice to End Tenancy in which the Landlord declared that the Notice was mailed to the Respondents' service address listed on the Application for Dispute Resolution, via registered

mail, on July 08, 2010. The Landlord submitted Canada Post documentation that shows that on July 13, 2010 the female Tenant signed to acknowledge receipt of the package that was mailed to the rental unit.

- A balance sheet that shows the Tenant owed \$810.00 in rent on July 08, 2010.

In the Application for Dispute Resolution the Landlord declared that the 10 Day Notice to End Tenancy for Unpaid Rent was served by registered mail on July 08, 2010.

In the Application for Dispute Resolution, the Landlord stated that the Tenant owes \$810.00.

Analysis

Based on the written tenancy agreement that was submitted in evidence and in the absence of evidence to the contrary, I find that the female Tenant entered into a tenancy agreement that required her to pay quarterly rent of \$75.00. I have insufficient evidence to conclude that the male Respondent entered into a tenancy agreement with the Landlord, as he has not signed the tenancy agreement that was submitted in evidence.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that a 10 Day Notice to End Tenancy was sent to the female Tenant, by registered mail, on July 08, 2010, pursuant to section 39 of the *Act*.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant had not paid outstanding rent of \$810.00 that was due on July 01, 2010 by the time the Landlord filed the Application for Dispute Resolution. I have no evidence to show that the Tenant paid the outstanding rent since the Landlord filed the Application for Dispute Resolution, and therefore I find that the Tenant owes rent in the amount of \$810.00, as section 20 of the *Act* requires her to pay rent when it is due.

I have no evidence to show that the Tenant filed an Application for Dispute Resolution seeking to set aside the Notice to End Tenancy. Pursuant to section 39(5) of the *Act*, I therefore find that the Tenant has accepted that the tenancy ended ten days after she received the Notice to End Tenancy that was mailed to her on July 08, 2010. On this basis, I find that the Landlord is entitled to an Order of Possession.

Conclusion

I find that the Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim against the female Tenant, in the amount of \$810.00, in compensation for unpaid rent. Based on these determinations I grant the Landlord a monetary Order for the amount of \$810.00. In the event that the Tenant does not comply with this Order, it may be served on the female Tenant, filed with the Province of British Columbia Small Claims 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 *Residential Tenancy Act*.

Dated: December 13, 2010.

Dispute Resolution Officer