



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order and an order to recover the filing fee for the Application, under the *Manufactured Home Park Tenancy Act* (the "Act").

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an Order of Possession and monetary relief?

Background and Evidence

Based on the testimony of both parties, I find that the Tenant was personally served with a Notice to End Tenancy for non-payment of \$1,945.00 rent on April 3, 2011. The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Tenant did not apply to dispute the Notice and made a partial payment to the Landlord of \$500.00 on April 12, 2011.

The Landlord applied the \$500.00 payment to outstanding rent from December of 2010, and January of 2011, and claims the Tenant failed to pay the rent balance in the amount

of \$110.00 for January and did not pay rent of \$585.00 per month for each of February, March, April, May and June of 2011.

Both parties agreed the tenancy agreement provides for a late payment fee of \$20.00 per month.

Therefore, the total amount the Landlord is claiming for is \$3,135.00, comprised of \$110.00 owed for January, plus \$605.00 for each month of February, March, April, May and June of 2011.

The Tenant testified that he attempted to pay the Landlord the rent, but the Landlord refused payment. The Tenant testified he put a letter on the door of the Landlord's office and took a picture of this. He testified the letter explains he wanted to pay the Landlord the rent. He took pictures on his cell phone camera, but did not submit these in evidence for the hearing. He testified he feels he should not have to pay the late fee, as he was willing to pay the Landlord but alleges the Landlord refused the rent.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find the Tenant has not paid all the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 39(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant.

I find the Tenant had insufficient evidence to prove he attempted to pay the Landlord all the rent owing. The Tenant has not paid the rent on the first day of these months as required, and therefore the \$20.00 late fee applies.

I find that the Landlord has established a total monetary claim of **\$3,185.00**, comprised of \$110.00 owed for January, plus \$605.00 for each month of February, March, April, May and June of 2011, and the \$50.00 fee paid by the Landlord for this application, and I grant the Landlord an order under section 67 for the amount owed.

Pursuant to section 70 of the Act, and except as otherwise provided in this Act, these orders are final and binding on the parties.

Conclusion

The Tenant failed to pay all the rent and did not file to dispute the Notice to End Tenancy. The Tenant is conclusively presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an Order of Possession and a monetary order for the balance of rent due and his filing fee for the Application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9 of the Act.

Dated: June 23, 2011.

Residential Tenancy Branch