



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 was convened by way of conference call in response to an application made by the landlord for an Order of Possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant for the cost of this application.

The landlord and the tenant, whose name is not as it appears on the Landlord's Application for Dispute Resolution, attended the conference call hearing, and both parties provided affirmed testimony. When questioned about the proper name of the tenant, the landlord responded that the name is exactly as it appears on other documents provided by the tenant, and the landlord declined to apply to amend the application.

All testimony and evidence provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

This month-to-month tenancy began on July 1, 2011. The tenant resides in a travel trailer which is parked on a pad in the manufactured home park owned by the landlord.

The tenant attended the conference call hearing late, and upon examining the landlord with respect to service of the notice of hearing and application, the landlord testified that the tenant was served by posting the documents to the door of the rental unit on December 31, 2011 and again personally on January 14, 2012. The tenant disputed that testimony and testified that the landlord did not serve the tenant with any documents on January 14, 2012. The landlord then testified that the tenant was told on January 14, 2012 that the documents were taped to the travel trailer.

At the outset of the hearing, the landlord advised that the tenant was incarcerated, and the landlord requires an Order of Possession to provide vacant possession of the rental pad. The tenant provided testimony of having been in rehabilitation and is now staying at a safe house. The tenant is not in jail.

The parties disagree on the amount of rent; the landlord testified that rent is \$630.00 per month and the tenant testified that the rent was originally \$580.00 and was increased to \$600.00 per month which includes cable, but did not provide any further particulars. No written tenancy agreement was prepared.

The landlord testified that the tenant paid a security deposit at the outset of the tenancy which was equivalent to a half a month's rent, or \$315.00. The tenant paid that with a partial payment of rent for the month of July, 2011, leaving a balance outstanding of \$255.00. Rent was paid in full for the months of August and September, 2011, but the tenant failed to pay any rent for the months of October, November or December, 2011. Further, no rent has been received for January, 2012. The landlord claims \$255.00 for July's rent, and 4 months of unpaid rent for October through January, and testified that the tenant now owes \$2,875.00 including late fees. During the hearing, the landlord was advised that collecting any security deposit was contrary to the *Act*, but the landlord continued to argue that a damage deposit was necessary to ensure that no damage is left behind by a tenant.

The landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on December 2, 2011 by posting it to the door of the rental unit, a copy of which was provided for this hearing. The notice is dated December 2, 2011 and contains an effective date of vacancy of December 12, 2011 and states that the tenant failed to pay rent in the amount of \$2,145.00 that was due on December 1, 2011.

The landlord further testified that the tenant attended at the landlord's office on January 14, 2012 and advised the landlord that the travel trailer would be removed that weekend, but the tenant did not show up to remove the travel trailer.

The tenant testified that the landlord was paid the pad rent for the month of July, 2011 and then the landlord asked for more money for a security deposit. The tenant refused to pay a security deposit and told the landlord that no security deposit could be charged by law. The tenant also testified that the landlord claims late fees however no tenancy agreement exists that provides for late fees. The tenant agrees that the landlord is owed money for pad rental for the period that the tenant was in rehabilitation, October through December, 2011.

The tenant further testified that the parties spoke on January 14, 2012 and the landlord told the tenant that documents were taped to the door of the travel trailer; the tenant was not personally served.

The tenant further testified that the tenant agreed to move the travel trailer from the rented pad, but upon arriving to move it, the landlord had parked a truck in front of the travel trailer to prevent the tenant from moving it. The tenant stated that the landlord wants to keep the travel trailer, and believes that with an Order of Possession the landlord will keep the travel trailer for the unpaid rent.

Analysis

The *Manufactured Home Park Tenancy Act* states that a person who makes an application for dispute resolution must serve a copy on the other party within 3 days of making it. The landlord testified that the tenant was served by posting the Landlord's Application for Dispute Resolution and notice of hearing documents to the door of the travel trailer owned by the tenant in the manufactured home park on December 31, 2011, and then by serving the tenant personally on January 14, 2012. That testimony was disputed by the tenant, and then the landlord changed the testimony to say that the tenant was told on January 14, 2012 that the documents were posted to the door. I am not satisfied in the circumstances that the landlord has served the tenant in accordance with the *Manufactured Home Park Tenancy Act*.

The *Act* also prohibits the collection of a security deposit or damage deposit in a manufactured home park tenancy.

With respect to the unpaid rent, I am satisfied that rent is due to the landlord, but I am not satisfied with respect to the amount. The landlord has failed to prepare a written tenancy agreement, and testified that a portion of the \$2,875.00 claim was for late fees. The landlord then agreed that excluding late fees, the tenant owes \$2,775.00. That amount was further decreased by the landlord during the course of the hearing to \$2,460.00 by deducting the security deposit of \$315.00. The tenant testified that rent is \$600.00 per month, not \$630.00 as declared by the landlord. The onus is on the claiming party to prove the amount, and I find that the landlord has failed to do so. In the circumstances, I am not satisfied that the landlord has established a claim for a specific amount of unpaid rent.

Further, I am not satisfied that the landlord is entitled to an Order of Possession for unpaid rent. The landlord has not complied with the *Act*, and the landlord has not been entirely truthful in the testimony provided.

The landlord also testified that the tenant had agreed to remove the travel trailer but didn't return to do so. The tenant testified to returning but the landlord had parked a truck in front of the travel trailer so the tenant could not remove it. The landlord clearly wanted the money from the tenant before allowing the tenant to take the travel trailer out of the manufactured home park. The tenant testified that the landlord wants to keep the travel trailer for unpaid rent. The *Act* does not permit such, unless the tenant agrees. Further, if a landlord receives an Order of Possession under the *Manufactured Home Park Tenancy Act*, the order is for vacant possession of the pad that the home is parked on, not for the travel trailer itself.

In summary, I find that the landlord has failed to establish that the tenant was served in accordance with the *Act*; the landlord has failed to establish the amount of rent owed by the tenant; the landlord has failed to establish that the landlord is entitled to an Order of Possession.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply. The landlord is at liberty to serve the tenant with another notice to end the tenancy if rent remains unpaid.

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: January 17, 2012.

Residential Tenancy Branch