



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OP, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the Landlord requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on March 1, 2012, copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A copy of a Canada Post receipt, tracking number and Canada Post information were supplied as evidence. The landlord stated the tenant has not retrieved the mail.

The landlord provided copies of past registered mail sent to the tenant at the address used for service; the Canada Post evidence shows that in the past the tenant has signed for registered mail sent by the landlord, to the same address and I find that this confirms the service address used was valid.

A failure to retrieve registered mail does not avoid service. Therefore, I find these documents are deemed to have been served in accordance with section 89 of the Act, however; the tenant did not appear at the hearing.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession?

Is the landlord entitled to a monetary Order in the sum of \$2,729.58 for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The manufactured home is situated in a remote area of the Province; the landlord's agents attend at the park once every 3 months to collect rent, as payment for the

current month and 2 months in advance. The landlord testified they do not own the homes and rent out sites.

In 2010 the landlord applied for an additional rent increase and was successful; obtaining an increase from \$25.00 to \$60.00 per month effective January 1, 2010; and to \$100.00 per month effective July 1, 2010. Tenants were sent the appropriate Notice of Rent Increase. The tenant was a respondent named in the rent increase application heard on June 22, 2009.

In 2005 the current tenant took over occupation of the home; the previous tenant vacated. The tenant paid no site rental to the landlord until May 22, 2009, at which point he paid \$750.00. The tenant made a second rent payment in the sum of \$500.00 on July 13, 2011.

The landlord had written the tenant asking he sign a tenancy agreement and issued a number of 10 Day Notices Ending Tenancy for Unpaid Rent to the tenant; on March 24, 2009; July 8, 2010 and October 3, 2010; copies of which were provided as evidence. The Notices were served to the tenant via registered mail. The landlord provided evidence of the tenant having signed, accepting registered mail that contained the Notices.

On April 14, 2011, the landlord issued another 10 Day Notice Ending Tenancy for Unpaid Rent, in the sum of \$1,779.58. The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$1,779.58 within five days of service. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord served the Notice to the tenant via registered mail sent on April 14, 2011; the tenant did not claim this mail and it was returned to the landlord.

The tenant continues to possess the rental unit and has not made any rent payment since July 2010.

The landlord submitted a tenant ledger which listed payments made and rent owed from February 5, 2005 to March, 2012, inclusive.

Analysis

I find that from the time the tenant occupied the rental unit in 2005 until he paid the landlord rent on May 22, 2009; that a tenancy agreement had not yet been established. The tenant took possession of the home, did not sign a tenancy agreement and did not pay site rental until May 2009. At the point of payment I find that the tenant acknowledged that he had entered into a tenancy agreement; which I find covered the

rental period commencing 30 months previous to that date; December, 2005. The \$750.00 rent payment made toward arrears established the tenancy and confirmed the agreement of rental of the site.

The tenant paid a further \$500.00 on July 13, 2010, which covered the rent owed from June 2009 to December 2009 in the sum of \$175.00 and from January 2010 to June 2010, in the sum of \$60.00 per month, totaling \$325.00; the tenant owed a balance of \$35.00 for June, 2010.

I find that the tenant has made no further rent payments since June 2010 and that effective July, 2010, rent increased to \$100.00 per month and that to March, 2012, he owes the landlord a further \$2,000.00.

Section 39(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant was deemed to have received this Notice on the 5th day after mailing; April 19, 2011, I find that the earliest effective date of the Notice is April 29, 2011; the date on the Notice. I find that the tenant cannot avoid service by refusing to accept registered mail.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on April 29, 2011, pursuant to section 39 of the Act.

Section 39(4) of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights, therefore; pursuant to section 39(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the Landlord an Order of Possession that is effective 2 days after service to the tenant.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

The landlord has been granted an Order of possession that is effective **2 days after service to 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, in the amount of \$2,085.00 in compensation for unpaid rent from June 2010 to March, 2012, inclusive and the filing fee costs of \$50.00 paid by the landlord for this Application for Dispute Resolution.

I grant the landlord an Order under section 60 for the balance due of \$2,085.00. This order may be filed in the Provincial Court (Small Claims) 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 55(1) of the *Manufactured Home Park Tenancy Act*.

Dated: March 15, 2012.

Residential Tenancy Branch