



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlords for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

The manufactured home was formerly owned by the Tenant's father who had a tenancy agreement with the Landlords. The Tenant has resided in the manufactured home since 2002 and in 2005 she purchased the manufactured home from her father (who is now deceased) but she has never entered into a written tenancy agreement with the Landlords. The Parties agree that pad rent is \$306.90 per month due in advance on the 1st day of each month.

The Landlords said at the end of February 2012 they received a rent payment for March 2012 from the Ministry on behalf of the Tenant however a few days later, they were contacted by an agent from the Ministry who asked the Park Manager if the Tenant still resided there. The Park Manager said he advised the Ministry that the Tenant was not residing there at that time and the agent for the Ministry then advised the Landlords not to cash the rent cheque but to return it to the Ministry. The Landlords said they returned the cheque to the Ministry and sent the Tenant an e-mail advising her that she would have to come up with the rent payment on her own.

The Landlords said on March 3, 2012, they served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting a copy of it on the door of the Tenant's mobile home and by giving a copy of it to the two occupants that were residing in it at the time. The Landlords claim these occupants later advised them that they told the Tenant about the Notice. The Landlords said they did not receive a rent payment for April 2012 when it was due and as a result on April 3, 2012, they served the Tenant

with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 3, 2012 by posting a copy of it on the door of the Tenant's mobile home.

The Tenant said that she advised the owner of the mobile home Park at the end of February that she would be leaving temporarily to get medical treatment for a work injury in Victoria and that in the interim, her nephew and his girlfriend would be staying in her mobile home for safekeeping and he agreed. The Tenant denied receiving any e-mails from the Landlords at the beginning of March 2012 advising her that the rent payment for March had been returned to the Ministry and claimed that she only found out about it at the end of March 2012 when she was advised by her nephew about the 10 Day Notice dated March 3, 2012.

The Tenant said upon investigation, she believes that the Park Manager, M.G., contacted the Ministry and advised them that she no longer resided there but was collecting rent from her nephew (which she claimed was not the case). Consequently, the Tenant said her benefits for March 2012 were revoked and she had to request a reconsideration which is still pending. The Tenant admitted that she received the 10 Day Notice dated April 3, 2012 which the Landlords posted to her door. The Tenant said she has been advised by the Ministry that a rent payment for April 2012 will be issued to the Landlords very shortly.

Analysis

Section 39(2) of the Act says that a 10 Day Notice to End Tenancy must comply with s. 45 of the Act. Section 45 of the Act says that a Notice to End Tenancy when given by a Landlord must be in the approved form. The Landlords submitted as evidence a copy of the 10 Day Notice dated March 3, 2012 that included only the first page. The second page containing information to a tenant about how to dispute a notice was not provided. The Landlord, M.G. claimed that both pages would have been served on the Tenant. However, I found M.G.'s evidence at the hearing to be very confused and therefore unreliable. For example, M.G. could not account for why the Notice had been served on March 3, 2012 but the Proof of Service was signed on March 29, 2012. M.G. was also confused as to when and how the Notice dated April 3, 2012 was served. Consequently, I find that there is insufficient evidence to conclude that the Tenant was served with a 10 Day Notice in the approved form on March 3, 2012 and for that reason I find that it is unenforceable.

Section 39(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section 39(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the rental unit at that time.

I find that the Tenant was served on April 3, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated April 3, 2012 when it was posted to her door. Under s.

83(c) of the Act, the Tenant is deemed to have received the Notice three days later or on April 6, 2012. Consequently, the Tenant would have had to pay the rent arrears stated on the Notice or apply for Dispute Resolution to dispute the alleged arrears no later than April 11, 2012.

I find that when the Tenant was served with the 10 Day Notice dated April 3, 2012 there were rent arrears for March and April 2012 in the total amount of \$613.80. I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 48(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears in the amount of \$613.80.

The Landlord also sought to recover late payment fees of \$25.00 for March and April 2012. However, s. 5(d) of the Regulations to the Act says that a Landlord may only charge a late fee if there is a term in the Parties' tenancy agreement to that effect. As the Parties do not have a written tenancy agreement, I find that the Landlords are not entitled to recover late payment fees and that part of their claim is dismissed without leave to reapply. I find that the Landlords are entitled pursuant to s. 65(1) of the Act to recover from the Tenant the \$50.00 filing fee for this proceeding.

Conclusion

An Order of Possession to take effect 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$663.80** have been issued to the Landlords. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: April 24, 2012.

Residential Tenancy Branch