



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Alpine Valley Estates Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPL, MNR, FF, ET

Introduction

This hearing dealt with the landlords' application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and for landlords' use of the property pursuant to section 48;
- a monetary order for unpaid rent pursuant to section 60;
- authorization to recover the filing fee for this application from the tenants pursuant to section 65; and
- an early end to this tenancy and an Order of Possession pursuant to section 49.

The tenant did not attend this hearing, although I waited until 9:51 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 a.m. Two of the landlords attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The male landlord testified that he handed the male tenant the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on January 7, 2013. The female landlord testified that she witnessed the male landlord hand the male tenant the 10 Day Notice on that date. The female landlord testified that she sent both tenants copies of the landlords' dispute resolution hearing package by registered mail on January 25, 2013. She provided the Canada Post Tracking Numbers for both registered mailings. She testified that Canada Post records show that both packages were successfully delivered to the tenants on January 28, 2013. I am satisfied that the above documents were served by the landlords to the tenants in accordance with the *Act*.

At the commencement of the hearing, the female landlord testified that she mistakenly included an application for an Order of Possession on the basis of a notice to end tenancy for landlord use in the application for dispute resolution. As no such notice had been issued by the landlords, she withdrew this element of the landlords' application for dispute resolution. She also withdrew the application for an early end to tenancy, as

she recognized that it was unlikely that there were sufficient reasons cited for seeking such an end to tenancy rather than proceeding under the standard provisions of the *Act*. Both of the above portions of the landlords' application for dispute resolution are withdrawn.

Issues(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent? Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This periodic tenancy commenced on August 27, 2011. Monthly rent for this pad rental in a manufactured home park is set at \$285.00, payable in advance on the first of each month.

The landlords' 10 Day Notice identified \$2,185.00 owing as of December 1, 2012. The landlords submitted into written evidence a tenant rent ledger and copies of a series of N.S.F. cheques for this tenancy. The landlords' 10 Day Notice of January 7, 2013 issuance was incorrectly dated as January 7, 2012. The female landlord testified that the tenants paid \$667.00 of the amount owing on January 22, 2013. She said that no receipt was issued for the tenants' money order payment on that date. The landlords testified that a further \$285.00 became owing on January 1, 2013, with a \$30.00 late fee charged to the tenants for their late payment of rent that month. The female landlord noted that the late charge/NSF cheque charge identified in the tenancy agreement was actually \$40.00, but the landlords have chosen to charge only \$30.00 of that amount. The female landlord was uncertain as to whether pad rental had been paid or accepted for February 2013. During the hearing, she attempted to contact the owner of the property, but was unable to communicate with the owner to obtain this information.

Analysis

The tenants failed to pay the amount identified as owing in the 10 Day Notice within five days of receiving that Notice. The tenants have not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the *Act*, the tenants failure to take either of these actions within five days led to the end of their tenancy on the effective date of the notice. However, the landlords accepted a sizeable money order from the tenants after the effective date of the landlords' 10 Day Notice. The female landlord testified that the tenants' \$667.00 payment was accepted for rent. In addition, the landlords were uncertain if an additional pad rental payment had been made by the tenants for February 2013. The landlords

did not request an additional monetary award of \$285.00 for unpaid rent for February 2013.

Under these circumstances, I find that the landlords have reinstated this tenancy by accepting a rental payment on January 22, 2013. The landlords did not demonstrate that the tenancy ended on the effective date of the 10 Day Notice and could not confirm that the landlords have discontinued accepting pad rental payments from the tenants. For these reasons, I dismiss without leave to reapply the landlords' application for an end to this tenancy on the basis of the 10 Day Notice issued on January 7, 2013 and dismiss their application for an Order of Possession.

I find that there is undisputed evidence that there remains unpaid rent from this tenancy. I find that the landlords are entitled to a monetary award of \$1,518.00 for the amounts owing from the 10 Day Notice plus \$285.00 for unpaid rent from January 2013. To this amount, I add a further entitlement to a \$30.00 late fee/NSF cheque fee. As the landlords have been partially successful in this application, I also allow the landlords to recover their \$50.00 filing fee from the tenants.

Conclusion

I dismiss the landlords' application for an end to this tenancy and an Order of Possession on the basis of the 10 Day Notice issued on January 7, 2013, without leave to reapply. This tenancy continues.

I issue a monetary Order in the landlords' favour under the following terms, which allows the landlords to obtain unpaid rent and to recover their filing fee:

Item	Amount
Rent Owing as of December 1, 2012	\$2,185.00
Rent Paid on January 22, 2013	-667.00
Unpaid January 2013 Rent	285.00
Late Fee/NSF Charge	30.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$1,883.00

The landlords are provided with these Orders in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 *Manufactured Home Park Tenancy Act*.

Dated: February 20, 2013

Residential Tenancy Branch