



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Vista Village Trailer Park Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, OPR, O

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Despite having been served with the application for dispute resolution and notice of hearing sent via registered mail on February 8, 2013 and received by the tenant on February 11, 2013, the tenant did not participate in the conference call hearing.

At the hearing, the landlord confirmed that she had transposed the tenant's first and last names on the application for dispute resolution and that she had misspelled the street name in the address of the rental unit. I found that the errors were unlikely to lead the tenant to believe that he was not the party against whom the claim was made and I allowed those errors to be corrected. The style of cause in this decision reflects that amendment.

Issues to be Decided

Is the landlord entitled to an order of possession?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord's undisputed evidence is as follows. The tenant is currently responsible to pay \$448.00 per month in rent. The landlord presented evidence showing that the tenant is several thousand dollars in arrears.

The landlord testified that on October 15, 2012, she personally served the tenant with a notice to end tenancy for unpaid rent.

Analysis

I find that the tenant's rent was significantly in arrears and I find that on October 15, 2012, the tenant received a 10 day notice to end tenancy for unpaid rent. The tenant did not pay the rental arrears and did not dispute the notice and is therefore conclusively presumed 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 and I enclose a formal order herewith. This order may be filed in the Supreme Court and enforced as an order of that Court.

As for the monetary order, the landlord provided an accounting record of credits and debits to the tenant's account which goes back to April 2011. The ledger has a number of cryptic notations, such as noting on May 10, 2012 that the tenant "cleared off old balances" when the balance showed that \$218.00 was still remaining and that on June 1, 2012 the tenant was "still behind from 2011" when the ledger shows that the tenant had a credit of \$225.00 at the end of 2011. The ledger further notes that on July 1, 2012 the tenant "paid only \$215.00" when the credit entry for that date shows that the tenant paid \$425.00. The ledger also shows that the tenant's July payment was returned by the bank for insufficient funds ("NSF") but the tenant was debited \$430.00 for that NSF cheque where the cheque was written for \$425.00. Because of these inaccuracies, I find that prior to August 1, 2012, the ledger cannot be relied upon as accurate. I have therefore considered that the tenant had a zero balance as of that date.

The ledger shows that in 2011, rent was \$400.00 per month and that it was increased in February 2012 to \$417.00 per month and in January 2013 to \$448.00 per month. As section 35 of the Act permits a landlord to impose rent increases no sooner than 12 months after the previous increase, I find that the increase which was to take effect on January 1, 2013 cannot be effective and I find that any rent due for 2013 must remain at the previous rate of \$417.00 per month.

With rent of \$417.00 due each month, the tenant was responsible to pay a total of \$2,919.00 for the 7 months of August 2012 – February 2013. While the tenant appears to have attempted several payments, each of those cheques were returned NSF and I find that the tenant made no rental payments during that period. I find that the landlord is entitled to recover those monies and I award the landlord \$2,919.00.

Although the landlord claims late payment fees and NSF fees, the landlord did not provide a copy of the tenancy agreement showing that the landlord is entitled to charge those fees. Section 5(2) of the Regulations requires that those fees not be imposed except by agreement. I therefore dismiss the claim for late payment fees and NSF fees.

As the landlord has been substantially successful in this claim, I award the landlord \$50.00 which represents the filing fee paid to bring the application.

I grant the landlord a monetary order under section 67 for \$2,969.00 which represents \$2,919.00 in rental arrears and the \$50.00 filing fee. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted an order of possession and a monetary order for \$2,969.00.

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: March 04, 2013

Residential Tenancy Branch

