



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ladha Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPB, MNR, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. The hearing was conducted by conference call. The landlord called in and participated in the hearing. The tenant did not appear although he was served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on March 27, 2013.

Issues

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

Background and Evidence

The rental unit is a manufactured home pad in the landlord's trailer court. This tenancy began on or about July 1, 2011. The current pad rent is \$461.00 due in advance on the first day of each month. There are rental arrears of \$23.00 from December, 2012. The tenant failed to pay December rent of \$444.00 and has not paid rent of \$461.00 for each month thereafter. As of March 1, 2013 there is outstanding rent of \$1,850.00. The landlord has claimed late payment fees of \$100.00 as well. On March 2, 2013 the landlord served the tenant with a Notice to End Tenancy for non-payment of rent by posting it to the door of the tenant's trailer. The tenant has not paid rent since the Notice to End Tenancy was posted and he did not file an application to dispute the Notice to End Tenancy. As of April, there is \$2,311.00 in outstanding rent.

Analysis

Section 39 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute

Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

Conclusion

Order of Possession - Based on the above background, evidence and analysis I find that the landlord is entitled to an order of possession effective two days after service on the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Monetary Order and Security Deposit—I find that the landlord has established a total monetary claim of \$2,311.00 for the outstanding rent for January, February, March and April as well as arrears from December. I decline to award late fees because the contractual provisions allows for late fees that exceed the amount permitted by the legislation, even though the landlord has refrained from claiming more than the allowed amount, I find that the contractual provisions are void and therefore unenforceable. The landlord is entitled to recover the \$50.00 filing fee for this application for a total award of \$2,361 and I grant the landlord an order under section 60 in the said amount. This order may be filed in the Small Claims Court 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 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: April 24, 2013

Residential Tenancy Branch

