



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Fruitvale Trailer Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; for a Monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done by posting them to the tenant's door on April 10, 2013. The tenant was deemed to be served the hearing documents on the third day after they were mailed as per section 83(b) of the *Manufactured Home Park Tenancy Act (Act)*.

The landlords agent and the new owner of the park appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Preliminary Issues

Section 82 of the *Act* provides for special rules for the service of hearing documents and states:

82 (1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 6, when required to be given to one party by another, must be given in one of the following ways:

(a) by leaving a copy with the person;

(b) if the person is a landlord, by leaving a copy with an agent of the landlord;

(c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;

(d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;

(e) as ordered by the director under section 64 (1) *[director's orders: delivery and service of documents]*.

(2) An application by a landlord under section 48 *[order of possession for the landlord]*, 49 *[application for order ending tenancy early]* or 49.1 *[order of possession: tenancy frustrated]* must be given to the tenant in one of the following ways:

(a) by leaving a copy with the tenant;

(b) by sending a copy by registered mail to the address at which the tenant resides;

(c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;

(d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;

(e) as ordered by the director under section 64 (1) *[director's orders: delivery and service of documents]*.

Consequently, I am unable to deal with the landlord's application for a Monetary Order as the tenant was not served in a manner specified under s. 82 with the hearing documents. I am however able to deal with the landlords application for an Order of Possession as the landlord is entitled to serve the tenant with the hearing documents when part of the application is for an Order of Possession for unpaid rent by posting it to the tenants door. The landlord is at liberty to reapply for a Monetary Order for unpaid rent.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Background and Evidence

The landlord testifies that this tenancy started on July 01, 2011. The pad rent for this unit is \$268.00 per month and is due on the first day of each month.

The landlord testifies that the tenant has failed to pay rent for 15 months from March 01, 2012 to May 01, 2013. The landlord testifies that to date the tenant owes rent of \$4,020.00. The landlord testifies that the tenant was served a 10 Day Notice by registered mail on March 18, 2013. This Notice informed the tenant that she owed rent of \$3,484.00 that was due on March 01, 2013. The notice also informed the tenant that the tenant had five days to either pay the outstanding rent or dispute the notice or the tenancy would end on March 28, 2013.

The New Owner of the Park seeks an Order of Possession to take effect as soon as possible. The New Owner of the Park testifies that the tenant and the tenant's mother are co-owners of the trailer and the owner of the park is willing to come to an arrangement with the tenant's mother as to the removal of the trailer once the tenant has vacated the trailer. I explained to the new owner of the park that if the tenant's mother is not a tenant then this Decision is concerning the tenancy only and any

arrangements made with the tenant's mother would have to be made separately between the tenant, the tenant's mother and the park owner.

Analysis

Section 20(1) of the *Manufactured Home Park Tenancy Act (Act)* states: *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Consequently, as the tenant has failed to attend the hearing to dispute the landlord's claim I find from the documentary evidence and testimony of the landlord that the tenant has failed to pay rent since March, 2012.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 81 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 39(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlord an order of possession pursuant to s. 48 of the *Act*.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service upon the tenant** This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$50.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 06, 2013

Residential Tenancy Branch

