



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction:

This was an application by the landlords for an Order for Possession, a Monetary Order pursuant to an Notice to End the Tenancy for Non-payment of Rent. Only the landlords attended the hearing.

Issues:

Are the landlords entitled to an Order for Possession and Monetary Order?

Background and Evidence:

The landlords testified that the tenancy began with previous owners about ten years ago and that this manager commenced managing the park in July of 2010 in which the tenants continued to reside. The landlords testified that they were not able to produce a signed written tenancy from the previous owners nor were they able to persuade the tenants to sign a new agreement with them. The landlords testified that nevertheless the agreed rent was \$ 255.00 due in advance on the first day of each month. There was no security deposit paid.

The landlords testified that they served the Notice to End the tenancy by posting it to the door on June 3, 2013 although they knew the tenants had sublet the unit to someone named "K." who currently resides in the unit, and also sent it by ordinary mail on June 4, 2013 to the address they obtained from the BC Manufactured Home Registry and the rental cheques.

The landlords testified that they sent the dispute resolution package by registered mail on June 12, 2013 to the aforementioned address. The registered mail package was returned to the landlords unclaimed. The landlord's agent J.F. testified that although the Notice to End Tenancy in question dated June 3, 2013 alleged that the rent for June was unpaid she received rental cheques in full from the tenants on June 12 and July 12, 2013 and issued receipts without any qualification thereon. The landlords are seeking an Order for Possession notwithstanding that the rent has been paid up to date.

The landlords also seek late payment fees for June and July. They submitted that there was likely a late payment fee in the original tenancy agreement by way of the rules yet were unable to produce those rules. They produced new rules which they testified that they mailed to the tenants around the end of May which state that late rental payments will be subject to a \$ 25.00 fee. The landlords also submitted that the tenants had rental arrears of over \$ 4,000.00 owing to the previous owners.

Analysis:

Policy Guideline 12 (10) of the Residential Tenancy Act regarding service states:

10. DEEMED SERVICE

The Legislation deems that a document not served personally, has been served a specified number of days after service:

- if given or served by mail, on the fifth day after mailing it
- if given or served by fax, on the third day after faxing it
- if given or served by attaching a copy of the document to a door or other place, on the third day after attaching it
- if served by leaving a copy of the document in a mail box or mail slot, on the third day after leaving it

Deemed service means that the document is presumed to have been served unless there is clear evidence to the contrary. Deemed service applies to all types of documents not personally served.

Based upon the evidence of the landlords I find that the dispute package is deemed to have been served by June 17, 2013 by registered mail notwithstanding that the tenants did not accept delivery of it. I find that posting the Notice to End the Tenancy to the door of the unit in which the landlords knew the respondents did not reside, is not service upon the respondents pursuant to section 81 of the Act. Based on the evidence of the landlord I find that the tenants were deemed to have been personally served with a Notice to End Tenancy for non-payment of rent five days after mailing it or on June 9, 2013.

Section 39 of the Act states:

Landlord's notice: non-payment of rent:

39 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 45 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

(4) Within 5 days after receiving a notice under this section, the tenant may
(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

Here I found that the tenants were deemed to have received the Notice for Non-payment of Rent on June 9, 2012 five days after mailing it on June 4, 2013. By the landlords' own admission rent was received in full on June 12, 2013 within the 5 days that the tenants were required to pay the rent after receiving the Notice. Unfortunately the tenants' arrears with the previous owner are of no assistance in this application. I therefore find that the Notice has no effect pursuant to section 39(4)(a). I have therefore dismissed the landlords' application for an Order for Possession. I allow the landlord's claim for late payment fee of \$ 25.00 for July 2013 but dismissed their claim for June as they have not satisfied me that the tenants were bound by such a clause either in the old or new rules prior to the rent being due in June 2013. The landlords are entitled to recover the \$50.00 filing fee for this application for a total claim of \$ 75.00.

Conclusion:

I have dismissed the landlords' application for an Order for Possession. I grant the landlords an order under section 60 for the balance due of **\$ 75.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court. This Decision and all Orders must be served on the tenants as soon as possible.

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: July 16, 2013

Residential Tenancy Branch