



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SUNNYSIDE MOBILE HOME PARK
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: MNR, OPR, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated July 2, 2013 and a monetary order for rental arrears owed.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on April, 2013, the tenant did not appear. The landlord verified service of the hearing package by registered mail and provided the Canada Post tracking number to show that the documents were properly served.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the Ten-Day Notice to End Tenancy issued under section 39?
- Has the landlord has proven that the landlord is entitled to monetary compensation under section 60 for rental arrears owed?

Background and Evidence

The landlord testified that the tenancy began approximately 6 years ago and the pad rent was increased on August 1, 2013 from \$352.00 to \$367.00 per month. The landlord testified that the tenant fell into arrears for rent in May 2013 and a 10-Day Notice to End Tenancy for Unpaid Rent was issued and served in person on the tenant on July 2, 2013.

The landlord submitted into evidence a copy of the Ten-Day Notice to End Tenancy dated July 2, 2013, showing arrears of \$1,135.00. The landlord testified that the tenant later made payments in installments for rent owed for June, July, August, and September 2013, but did not pay the outstanding arrears of \$360.00 still owed for May 2013, plus \$25.00 late fees payable under the tenancy agreement. No copy of the tenancy agreement was in evidence.

The landlord acknowledged that the tenant's subsequent payments were accepted by the landlord without the landlord clarifying to the tenant that these funds were being accepted "*for use and occupancy only*". The landlord stated that the payments were merely dropped off by the tenant in a mailbox. Therefore the landlord did not have an opportunity to explain that the acceptance of the payments did not function to reinstate the tenancy after the Notice to End was issued.

Analysis

In regard to Section 39 of the Manufactured Home Park Tenancy Act (the Act) states:

- (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.

Based on the testimony of the landlord, I find that the tenant did not submit the rent payment when it was due and was therefore served with a Ten-Day Notice to End Tenancy for Unpaid Rent on July 2, 2013.

However, I find that the tenant did make subsequent payments for rent owed for June, July, August and September 2013 and these payments were accepted by the landlord.

I find that the landlord did not issue a receipt, nor make a statement to the tenant, to clarify that the funds paid towards the arrears were being accepted for use and occupancy only and did not function to reinstate the tenancy.

I find that the landlord's acceptance of the partial payment for rent owed, without first making this condition clear, constitutes a reinstatement of the tenancy relationship. Therefore I find that the 10-Day Notice to End Tenancy for Unpaid Rent must be cancelled.

Although I find that the tenancy has been reinstated, I also find that the tenant still owes the landlord rental arrears of \$360.00 and the landlord is entitled to be compensated in this amount.

With respect to the landlord's claim for \$25.00 in late fees, I find that section 5(1)(d) of the *Manufactured Home Park Tenancy Regulation*, (the *Regulation*), provides that a landlord can charge an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent but only if the tenancy agreement between the parties specifically provides for that fee.

In this instance, I find that the Landlord has not submitted a copy of the tenancy agreement into evidence showing that the parties had both agreed that there will be a late fee charged as a term of the tenancy agreement.

For this reason, I find that the portion of the landlord's application claiming late fees must be dismissed.

Based on the testimony and evidence discussed above, I hereby order that the 10-Day Notice to End Tenancy for Unpaid Rent dated July 2, 2013 is cancelled and of no force nor effect, as the tenancy was inadvertently reinstated since the Notice was issued.

Based on the testimony and evidence before me I hereby grant the landlord a monetary order in the amount of \$410.00, comprised of \$360.00 for the remaining rental arrears still owed and the \$50.00 cost of this application. This Order must be served on the respondent and may be enforced through an order through Small Claims Court if unpaid.

I hereby dismiss the portion of the landlord's application seeking the Order of Possession and the \$25.00 late fees.

Conclusion

The landlord is partly successful in the application and is granted a Monetary Order for rental arrears. The landlord's request for an Order of Possession is dismissed as the tenancy was reinstated and the landlord's request for late fees is dismissed, without leave, for insufficient evidence.

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: September 11, 2013

Residential Tenancy Branch

