



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant –CNR, O
For the landlord – OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied to cancel a 10 Day Notice to End Tenancy for unpaid rent. The landlord applied 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. The tenant applied under the *Manufactured Home Park Tenancy Act* where as this tenancy falls under the *Residential Tenancy Act (Act)*

The hearing went ahead as scheduled however the tenant failed to dial into the hearing during the conference call. Therefore, no hearing took place regarding the tenant's application. As the tenant has failed to present the merits of their application the tenant's application is dismissed without leave to reapply.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on August 02, 2013. Mail receipt numbers were provided in the landlords' documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a Monetary Order to recover unpaid rent?

Background and Evidence

The landlord testifies that this month to month tenancy started originally on December 01, 2012 with two tenants. One of these tenants was allowed to end the tenancy and the remaining tenant (AT) entered into a new tenancy agreement with the landlord on January 01, 2013. Rent for this unit is \$800.00 per month and is due on the 1st of each month.

The landlord testifies that the tenant failed to pay rent for July, 2013. The landlord issued a 10 Day Notice to End Tenancy for unpaid rent on July 24, 2013. This Notice was served by registered mail on July 24, 2013 and was deemed served on July 29, 2013. The Notice states the tenant owes \$800.00 in rent for July. The tenant had five days to either pay the outstanding rent or apply for Dispute Resolution or the tenancy would end on August 08, 2013. The tenant did not pay the outstanding rent and although the tenant has disputed the Notice within five days, as the tenant filed an application on August 02, 2013, the tenant has not appeared at the hearing today to present the merits of their application. Since that time the tenant has not paid rent for August or September, 2013. The landlord testifies that there is now rent arrears of \$2,400.00.

The landlords seek a Monetary Order to recover unpaid rent and have also applied for an Order of Possession to take effect as soon as possible.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord.

Section 26 of the 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 I find that the tenant has failed to pay rent for July, August and September, 2013 and the landlord is entitled to recover these rent arrears to the sum of **\$2,400.00**. The landlord will receive a monetary award for this amount pursuant to s.67 of the *Act*.

As the landlord has been successful in this matter, the landlord is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 72(1) of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 88 of the *Act*. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The Notice is deemed to have been received by the tenant on July 29, 2013. I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 46(4) of the *Act*.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and grant the landlords an order of possession pursuant to s. 55 of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,450.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlords effective **two days** after service on 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.

The tenant's application is dismissed without 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: September 18, 2013

Residential Tenancy Branch

