



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FIGUEIRA HOLDINGS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

This matter was conducted by way of a Direct Request Proceeding, pursuant to Section 48(4) of the *Manufactured Home Park Tenancy Act* (referred to as the *Act*) in response to a landlord's application for an Order of Possession and a Monetary Order for unpaid rent.

The landlord submitted a signed Proof of Service of the Notice of Direct Request which declares that on October 23, 2013 the landlord served each tenant with the Notice of Direct Request by registered mail. Based on the written submissions of the landlord, I find that tenants were served with the Notice of Direct Request Proceeding requesting an Order of Possession and a Monetary Order as required by the *Act*.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?
Has the landlord established a monetary claim against the tenants for unpaid rent?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a tenancy agreement signed by the landlord and the tenants on July 28, 2009 for a tenancy commencing on September 15, 2009 for the monthly rent of \$375.00 payable on the first day of each month;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on October 4, 2013 with an effective vacancy date of October 14, 2013 due to \$1,782.00 in unpaid rent due on October 1, 2013 (both pages of the two page approved form were provided);
- A copy of the Proof of Service of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which states that the landlord served the notice to the tenants on October 4, 2013, by posting it to the tenants' door with a witness.

- The Landlord's Application for Dispute Resolution made on October 22, 2013 claiming outstanding rent of \$1,782.00. The details section states that the tenants have not paid rent since July, 2013 and the landlord is not claiming late fees.
- A ledger which shows a breakdown of the monetary charges for one of the tenants since April 2, 2012. The ledger shows that the tenant was charged \$440.00 from July, 2013 onwards.

Analysis

I have reviewed all the documentary evidence and accept that the tenants were served with the notice to end tenancy by posting it to the door. The *Act* states that documents are deemed to have been served 3 days after posting. Therefore, I find that the tenants were deemed to be served on October 7, 2013, and the effective date of vacancy is automatically changed to October 17, 2013 pursuant to Section 46 of the *Act*.

I accept the evidence before me that the tenants have failed to dispute the notice or pay the rent owed within the 5 days provided under Section 39(4) of the *Act*. Therefore, 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. I therefore find that the landlord is entitled to an Order of Possession.

However, in relation to the monetary claim for \$1,782.00, there is insufficient details/evidence submitted with the application to explain how the landlord reached this monetary amount and what the monetary claim comprises of.

According to the written tenancy agreement submitted, the rent amount per month payable for the period of July, 2013, which is the period the landlord claims in the details section of the application that the tenant was in rent arrears, is \$375.00. However, the ledger submitted with the application as evidence of the rent arrears shows that the tenant was being charged \$440.00 for the months of July, August, September and October, 2013. There is no evidence or clear explanation as to why the tenant was being charged this amount and why this differs to the amount documented on the tenancy agreement. As a result, I am unable to understand how the landlord reached the amount being claimed in this application and as a result, I am unable to grant a monetary order with respect to the claim for unpaid rent.

Conclusion

For the reasons set out above, I find the landlord is entitled to an Order of Possession effective 2 days after service on the tenant. This order must be served on the tenant and may be filed and enforced in the Supreme Court as an order of that Court.

For the reasons set out above, I dismiss the landlord's claim for a Monetary Order. However, I give the landlord leave to re-apply for the monetary portion of this application.

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: October 30, 2013

Residential Tenancy Branch

