



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0868732 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on August 23, 2013 copies of the Application for Dispute Resolution and Notice of Hearing were sent to the tenant via registered mail at the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service. The tenant did not claim the mail and it was returned to the landlord.

Pursuant to section 83 of the Act registered mail is deemed served on the 5th day after mailing. Refusal to claim registered mail does not allow a party to avoid service.

Therefore, I find that these documents are deemed to have been served in accordance with section 82 and 83 of the Act; however the tenant did not appear at the hearing.

Preliminary Matters

The application was amended to include unpaid October 2013 rent.

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 for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The tenancy commenced prior to the time the landlord purchased the park in 2010. Rent for the site is currently \$308.65, due on the 1st day of each month.

The landlord stated that on July 26, 2013 a 10 day Notice to end tenancy for unpaid rent, which had an effective date of August 5, 2013 was served by registered mail, to the tenant's rental unit address. The tenant did not claim the registered mail and it was returned to the landlord.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$985.55 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

From the time the Notice was served to the tenant until September, 2013, no rent payments were made. In September the tenant paid \$550.00; a receipt for use and occupancy was issued. A copy of the receipt was supplied as evidence. On September 27, 2013 the tenant paid a further \$700.00; another receipt for use and occupancy was issued.

The landlord stated that the tenant is currently in arrears \$536.50; including October 2013 rent. The landlord supplied a breakdown of payments made since April 2013, when the tenant had a credit of \$15.40. From May to October 2013 the tenant paid \$1,315.40; rent owed was \$1,851.90.

The agent stated that the owner has talked with the tenant and agreed to meet with him at the time of this hearing. The tenant had indicated he was not going to attend the hearing.

Analysis

Section 83 of the Act stipulates that a document that is mailed is deemed served on the 5th day after mailing. Refusal to claim registered mail does not allow a party to avoid service. Therefore, I find that the tenant received the Notice to end tenancy on July 31, 2013.

Section 39(1) of the Act stipulates that a 10 day notice to end tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on July 31, 2013 I find that the earliest effective date of the Notice is August 10, 2013.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to end tenancy that required the tenant to vacate the rental unit on August 10, 2013, pursuant to section 39 of the Act.

Section 39(4) of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to end tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights, therefore; pursuant to section 39(5) of the Act, I find that the tenant accepted that the tenancy has ended. The tenant has paid rent, but did not pay the rent owed within 5 days of July 31, 2013. On this basis I will grant the Landlord an Order of possession.

I find that the landlord's application has merit, and that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord has been granted an Order of possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$586.50 in compensation for unpaid rent to October 1, 2013, inclusive and the filing fee costs of \$50.00 paid by the landlord for this Application for Dispute Resolution.

I grant the Landlord a monetary Order under section 60 of the Act, in the sum of \$586.50. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

Conclusion

The landlord is entitled to an Order of possession and a monetary Order for unpaid rent.

The landlord is entitled to filing fee costs.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 55(1) of the *Manufactured Home Park Tenancy Act*.

Dated: October 02, 2013

Residential Tenancy Branch