



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOMBARDY MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MND MNR MNDC FF

Preliminary Issues

Residential Tenancy Rules of Procedure, Rule 2.3 states that, in the course of the dispute resolution proceeding, if the arbitrator determines that it is appropriate to do so, he or she may dismiss the unrelated disputes contained in a single application with or without leave to reapply.

Upon review of the Landlord's application I have determined that I will not deal with all the dispute issues placed on their application. For disputes to be combined on an application they must be related. Not all the claims on this application are sufficiently related to the main issue relating to the Notice to end tenancy. Therefore, I will deal with the Landlord's request for an Order of Possession and a Monetary Order relating to unpaid or loss of rent; and I dismiss the request for compensation relating to damage to the unit site or property, with leave to re-apply.

On a procedural note the Owner signed into this proceeding nine minutes late and the Resident Manager, hereinafter referred to as the Landlord, signed into the proceeding thirteen minutes late. Both the Owner and Landlord were informed of the testimony prior to their arrival and both were reminded of the *Residential Tenancy Branch Rules of Procedure* that requires the hearing to start at the scheduled time.

Introduction

This hearing dealt with an Application for Dispute Resolution filed on January 06, 2014, by the Landlord to obtain an Order of Possession for unpaid rent and a Monetary Order for: unpaid rent or utilities; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and to recover the cost of the filing fee from the Tenant for this application.

The parties appeared at the teleconference hearing and gave affirmed testimony. At the outset of the hearing I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Is the Landlord entitled to an Order of Possession, pursuant to section 48 of the *Manufactured Home Park Tenancy Act*?
2. Is the Landlord entitled to a Monetary Order, pursuant to section 60 of the *Manufactured Home Park Tenancy Act*?

Background and Evidence

The undisputed testimony provided that the Tenant has occupied the Manufactured Home Park site since about 2006, which is prior to when the current owner purchased the property in 2008. No written tenancy agreement was passed to the new owners and it was undisputed that the Tenant was initially required to pay rent on the first of each month in the amount of \$280.00. Rent was subsequently increased to \$290.00 per month effective January 1, 2014.

The Landlord submitted that as of December 2013 the Tenant had accumulated a balance owing of \$2,600.00 in unpaid rent so on December 23, 2013, she personally served him a 10 Day Notice for unpaid rent. No rent has been paid since and the Tenant now owes \$3,180.00 which includes the rent due for January and February 2014 at \$290.00 per month.

The Tenant testified and acknowledged that he owes the Landlord rent. He stated that he tried his best to try to make payment arrangements and he understands that he is required to move and provide the Landlord vacant possession of the manufactured home park pad. He requested to be allowed ten (10) days before being evicted.

In closing, the Landlord requested an Order of Possession and a Monetary Order and said it was up to the Owner to decide if he would allow the Tenant ten days to vacate. The Owner testified that he agreed to allow the Tenant the time and requested the Order of Possession for (10) days from the hearing date, which is March 2, 2014.

Analysis

When a tenant receives a 10 Day Notice to end tenancy for unpaid rent they have (5) days to either pay the rent in full or to make application to dispute the Notice or the tenancy ends.

In this case the Tenant received the 10 Day Notice on December 23, 2013, and the effective date of the Notice is **January 2, 2014**, in accordance with section 48 of the Act. The Tenant did not pay the rent and did not dispute the Notice, therefore, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and must vacate the manufactured home park site to which the notice relates, pursuant to section 48(5) of the Act. Accordingly, I approve the Landlord's request for an Order of Possession effective **March 2, 2014**.

The Landlord claimed unpaid rent of \$2,600.00 which was due December 1, 2013. The Tenant failed to pay rent in accordance with the tenancy agreement which is a breach of section 26 of the Act. Accordingly, I award the Landlord the undisputed Monetary Award for unpaid rent of **\$2,600.00**.

As noted above this tenancy ended on **January 2, 2014**, in accordance with the 10 Day Notice. Therefore I find the Landlord is seeking money for use and occupancy of the manufactured home site for January and February, 2014, not rent. The Tenant is still occupying the site which means the Landlord will not regain possession until after service of the Order of Possession. Therefore, I find the Landlord is entitled to use and occupancy and any loss of rent for the entire months of January and February, 2014, in the amount of **\$580.00** (2 x \$290.00).

The Landlord has been successful with their application; therefore I award recovery of the **\$50.00** filing fee

Conclusion

I HEREBY FIND the Landlord is entitled to an Order of Possession effective **March 2, 2014**. This Order is legally binding and must be served upon the Tenant.

The Landlord has been awarded a Monetary Order in the amount of **\$3,230.00** (\$2,600.00 + \$580.00 + \$50.00). This Order is legally binding and must be served upon the Tenant. In the event that the Tenant does not comply with this Order it may be filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: February 20, 2014

Residential Tenancy Branch

