



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Bel-Aire Estates
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNDC, FF, O

Introduction

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent or for the tenants' failure to abide by the terms of their fixed term tenancy agreement and remove the manufactured home from the manufactured home site pursuant to section 48;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 60;
- authorization to recover his filing fee for this application from the tenants pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The landlord's agent (the landlord) testified that he sent copies of the landlord's dispute resolution hearing package to both tenants identified on the Manufactured Home Site Tenancy Agreement by registered mail on February 7, 2014. He testified that he sent these packages to the addresses provided to the landlord. LJ (the tenants' agent), the spouse of the male tenant and the mother of the female tenant, testified that she and her husband did not receive the landlord's hearing package as they were out of the country when this package was sent to them. The tenants' agent testified that the landlord did not send his hearing package for her husband at their correct post office box in another community. However, she was uncertain as to whether they had ever provided the landlord with written notice of the post office box they use for receiving mail. The landlord testified that he sent the hearing packages to the tenants at the only addresses the tenants had provided to the landlord, the address where the manufactured home is situated. The tenants did not dispute the landlord's claim that Tenant JM received the landlord's hearing package on February 10, 2014. The tenants' agent testified that she and her husband were aware of the issues identified in the landlord's application on the basis of their conversations with their daughter. In accordance with sections 82 and 83 of the *Act*, I find that the tenants were

deemed served with the landlord's hearing packages on February 12, 2014, the fifth day after their registered mailing.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession? Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The parties signed a 10-month Manufactured Home Site Tenancy Agreement (the Agreement) on March 5, 2013 for a tenancy that was to commence on March 1, 2013, and end on December 31, 2013. Monthly rent was set at \$260.00 for the rental of the manufactured home site (the pad site), payable in advance on the first of each month. Section 2(b)(iii) of the Agreement included initials by both the landlord and the female tenant indicating that they both understood at that time that "At the end of this fixed length of time:...the tenancy ends and the tenant must move off the manufactured home site."

Although the tenants' agent said that she and her husband believed that they had provided the landlord with 12 months of pre-paid cheques at the beginning of this tenancy, the tenancy was scheduled to end on December 31, 2013. The landlord denied having received 12 cheques from the tenants. The tenants' agent was uncertain whether the landlord has cashed cheques for January or February 2014.

The landlord applied for an Order of Possession for unpaid rent and because the tenants had failed to remove the manufactured home from the pad site by the date specified in their Agreement. The landlord also applied for a monetary award of \$795.00, which the landlord maintained was owed for the tenants' failure to pay rent for January, February and March 2014. At the hearing, the landlord testified that the requested \$795.00 monetary award was calculated on the basis of the \$265.00 monthly rent that the manufactured home park is charging all tenants in that park for 2014.

I noted that whether or not the landlord is charging tenants this amount has little bearing on the requirement in the *Act* and in the Agreement that the landlord has a contractual obligation to keep the tenants' monthly rent at \$260.00 for the 12-month period following the start of this tenancy. Increases in rent can only be obtained when a landlord follows the proper process for giving tenants 3-months written notice of any proposed rent increase, which did not occur in this case.

Analysis

Pursuant to section 56 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to settle all disputes arising out of the landlord's application and this tenancy under the following final and binding terms:

1. Both parties agreed that this tenancy will end by 1:00 p.m. on April 30, 2014, by which time the tenants will have removed the manufactured home from the manufactured home rental site.
2. The tenants agreed to pay the landlord the sum of \$1,040.00 by April 1, 2014.
3. The landlord agreed that all monetary issues arising out of the landlord's application and this tenancy are satisfied if the tenants abide by the monetary terms of this settlement agreement.
4. The landlord agreed to withdraw the application for an Order of Possession for unpaid rent.
5. Both parties agreed that the terms of this settlement agreement constituted a final and binding resolution of all issues identified in the landlord's application and arising out of this tenancy and furthermore agreed that they will not initiate any further applications for dispute resolution provided the parties abide by the terms of this settlement agreement.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord **only** if the tenants fail to remove the manufactured home from the manufactured home site in accordance with their agreement. The landlord is provided with these Orders in the above terms and the tenant must be served with this Order in the event that the tenant does not vacate the premises by 1:00 p.m. on April 30, 2014, in accordance with their settlement agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$1,040.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the

tenant does not abide by the terms of the above settlement. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: March 27, 2014

Residential Tenancy Branch

