



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding The Pines Mobile Home Park LLP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, OPB, FF, O

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent; an Order of Possession because the tenant breached an agreement with the landlord, other issues; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 82 of the *Act*; served by registered mail on February 19, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 83(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Manufactured Home Park Tenancy Act (Act)*. 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 an Order of Possession because the tenant breached an agreement with the landlord?

Background and Evidence

The landlord testifies that this tenancy originally started on November 30, 2007 between the landlord and two tenants. The parties entered into new agreements for a licence to occupy for three monthly terms on July 30, 2012 and each subsequent three months. At a previous hearing held on January 08, 2014 it was determined that these agreements constituted a tenancy agreement as the landlord had been accepting rent for this site. The last three months agreement started in August, 2013.

The landlord testifies that there were two tenants residing in this trailer owned by the tenants. The landlord had obtained an Order of Possession against the female tenant on July 04, 2012, however the landlord did not enforce this Order through Supreme Court until October 24, 2013. At that time the Supreme Court issued a writ of Possession against the female tenant only. The female tenant moved out on November 04, 2013. However, the male tenant had vacated on or about August 31, 2013. As the Order of Possession was only made out against the female tenant the bailiffs were not willing to remove the trailer from the site as the trailer was owned by both tenants.

The landlord testifies that the trailer remains on the site and no rent has been paid by the male tenant since August, 2013. The landlord testifies that they cannot consider that the trailer has been abandoned at this time as the male tenant has not orally or in writing expressed that he does not intend to return to the trailer. The male tenant did send the landlord a rent cheque dated January 23, 2014 and the landlord has taken that the tenant seeks to remain as a tenant as he attempted to pay rent. However, the tenant also put a stop on that cheque and it was not therefore honored at the bank.

The landlord testifies that a 10 Day Notice to End Tenancy was served upon the male tenant on February 04, 2014. This was prior to the landlord being informed that the tenant had put a stop on his rent cheque. The Notice informed the tenant that he owed rent of \$2,478.00. This did not include the amount on the rent cheque. The Notice was served by registered mail on February 04, 2014 and has an effective date of February 14, 2014. The landlord testifies that to date the tenant owes rent of \$3,956.25. The landlord has calculated the rent on a daily basis of \$16.25 per day as per the party's latest agreement. The landlord testifies that the tenant has paid no rent since receiving the 10 Day Notice.

The landlord requests an Order of Possession effective as soon as possible and seeks to recover the filing fee of \$50.00.

Analysis

Section 20(1) 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.*

I find that as the female tenant was removed from the site on November 04, 2013 the tenancy continued at that time with the male tenant even though he no longer resided on the site, he had not been removed legally from the site and had not given the landlord Notice to End the tenancy.

I have reviewed all documentary evidence and accept that the tenant has been served with Notice to End Tenancy as declared by the landlord. The Notice is deemed to have been received by the tenant on February 09, 2014 and the effective date of the Notice is amended to February 19, 2014 pursuant to section 46 of the *Act*. 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 39 (4) of the *Act*.

Based on the foregoing, 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 and grant the landlord an Order of Possession pursuant to s. 48 of the *Act*.

As an Order of Possession has been issued for nonpayment of rent I am not required to deal with the landlords application for an Order of Possession because the tenant has breached an agreement with the landlord.

Conclusion

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days after service upon the tenant**. This Order must be served on the Respondent. If the respondent fails to remove the trailer from the site the Order may be filed in the Supreme Court and enforced as an Order of that Court.

As the landlord has been successful with this claim I find the landlord is also entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 65(1) of the *Act*. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$50.00**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court 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: April 10, 2014

Residential Tenancy Branch

