



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LADHA ENTERPRISES LTD
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes:

MNR, OPR, FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for an Order of Possession based on the Ten-Day Notice to End Tenancy for Unpaid Rent dated May 2, 2014 and a monetary order for rent owed. The landlord is also claiming late fees of \$25.00 pursuant to a term in the park "*Regulations*"

The two co-tenants and the landlord were all present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

The tenants advised that the male co-tenant had vacated the manufactured home in the park but the female co-tenant is still residing in the manufactured home.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession based on the Ten-Day Notice to End Tenancy under section 39?
- Is the landlord entitled to monetary compensation under section 60 for rental arrears owed and late fees?

Background and Evidence

The landlord submitted into evidence a copy of the Ten-Day Notice to End Tenancy dated May 2, 2014 that the landlord testified was served by posting on the tenant's door. The effective date was May 12, 2014. The landlord testified that the monthly pad

rent is \$499.00 and the tenant failed to pay rent for the months of April 2014, May 2014 and June 2014, accruing arrears of \$1,547.00. The landlord testified that the tenant was served with a 10-Day Notice to End Tenancy for Unpaid Rent on May 2, 2014, but has not vacated, nor has the tenant paid the arrears.

The landlord stated that the tenants are required under the park regulations to pay \$25.00 late fees when rent is paid after the due date. The landlord submitted a copy of the park Regulations into evidence.

The tenant did not deny that the rent was unpaid and acknowledged that they had never filed an application for dispute resolution to dispute the 10-Day Notice to End Tenancy for Unpaid Rent.

Analysis

Placed into evidence was a copy of the 10-Day Notice to End Tenancy dated May 2, 2014. I find that the Manufactured Home Park Tenancy Act (the Act) states:

(1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Based on the testimony of the parties, I find that the tenant was served with a Ten-Day Notice to End Tenancy for Unpaid Rent. The tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 38(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice. Based on the above facts I find that the landlord is entitled to an Order of Possession

In regard to the rental arrears, I find that the landlord is entitled to be compensated for \$499.00 rent owed for each of the months of April, May and June 2014 totaling \$1,497.00.

In regard to the claim for late fees, I find that late fees must be a contract term contained in a valid and enforceable written tenancy agreement signed between the landlord and the tenant.

In this instance, I find that section 5(1)(d) of the *Manufactured Home Park Tenancy Regulation*, (the *Regulation*), provides that a landlord can charge an administration fee of not more than \$25.00 for the return of a tenant's cheque by a financial institution or for late payment of rent. However, late fees only apply if **the tenancy agreement between the parties specifically provides for that fee**. (My emphasis)

In this instance, the Landlord has not submitted a copy of the tenancy agreement into evidence showing that the parties had both agreed that the tenant would be responsible to pay a late fee as a term of the tenancy agreement. I find that imposing late fees as a park rule, is not appropriate and, as such, is unenforceable under the Act and regulations,

For this reason, I find that the portion of the landlord's application claiming late fees must be dismissed.

I find that the landlord has established a total monetary claim of \$1,547.00, comprised of \$1,497.00 accrued rental arrears and the \$50.00 fee paid by the Landlord for this application.

I hereby grant the landlord a monetary order against the tenant in the amount of \$1,547.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Under *section 48* of the *Act*, and based on the above facts I also find that the Landlord is entitled to an Order of Possession. I hereby grant an Order of Possession in favour of the landlord, effective two days after service on the Tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The landlord is successful in the application and is granted an Order of Possession and a Monetary Order. The portion of the application seeking late fees is dismissed without leave.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 24, 2014

Residential Tenancy Branch

