



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 532451 BC Ltd., dba Ranch Park Retirement Community
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The landlord company was represented by legal counsel who attended as the landlord's agent, and also called one witness. However, despite being served with the Landlord's Application for Dispute Resolution, notice of the dispute resolution hearing and evidentiary material by registered mail to the rental unit and again to another address on October 9, 2014, no one for the tenant attended. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the landlord's agent and witness. The landlord's agent testified that the documents were sent on that date and in that manner and has provided 2 Registered Domestic Customer Receipts containing tracking numbers assigned by Canada Post, and I am satisfied that the tenant has been served in accordance with the *Manufactured Home Park Tenancy Act*.

The landlord's agent and witness each gave affirmed testimony. All evidence and the testimony have been reviewed and are considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Manufactured Home Park Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for legal fees or maintenance costs associated with this tenancy?

Background and Evidence

The landlord's agent testified that this tenancy, being the rental of a manufactured home site in a manufactured home park began on or about July 7, 2010, being the date that the landlord's agents and the tenant entered into a written tenancy agreement, a copy of which has been provided. Rent in the amount of \$457.69 per month was payable in advance on the 1st day of each month which was raised to \$467.76 effective June 1, 2014 and a copy of the Notice of Rent Increase has been provided.

The landlord's agent further testified that the tenant has left the manufactured home uninhabited and has not been there since the summer of 2013 and the tenant has stopped collecting mail there. The tenant continued to pay the site rental until March, 2014 but no rent has been paid since. A schedule of payments due and paid has been provided which commences March, 2014 to September, 2014. It shows that the tenant was in arrears the sum of \$850.86, less a payment of \$500.00, plus rental due for March, 2014 totalling \$808.55 in arrears at that time, and that the sum of \$3,594.97 was due as at September, 2014.

The landlord caused the tenant to be served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. The notice is dated July 4, 2014 and contains an expected date of vacancy of July 21, 2014 for unpaid rent in the amount of \$2,659.45 that was due on July 1, 2014. He stated that the park manager served the notice by posting it to the door of the manufactured home on July 7, 2014.

The landlord's agent further testified that the tenant's manufactured home was listed for sale temporarily, and a person identifying herself as the tenant's sister attended the manufactured home to retrieve the tenant's personal belongings. Since then, the water pipes in the manufactured home burst and the home suffered water damage, and is no longer for sale. The manufactured home is still vacant and the landlord seeks an Order of Possession, a monetary order for the unpaid site rental, arrears for rent and maintenance, recovery of legal fees and the filing fee for the cost of this application.

The landlord's witness testified that he is the park manager and has been since 1999. In 2010 he met the tenant and the parties signed the tenancy agreement. Rent at that time was \$452.00 per month but was raised from time-to-time and is currently \$467.76 per month.

The witness further testified that the tenant had left post-dated cheques which ended in May, 2013 while the home was vacant, then in July, 2013 the landlord received another cheque in the amount of \$500.00.

The winter of 2013/14 was a cold winter and the pipes in the manufactured home burst. The tenant had mentioned to the witness the name of the tenant's sister, and in the summer of 2013 a person identifying herself as the tenant's sister and power of attorney attended with the person's husband. They removed furniture and other belongings of the tenant out of the manufactured home. The witness had thought that they had also winterized the home. The witness called the real estate agent once the pipes had burst and the For Sale sign came down. Although some maintenance was required at the manufactured home, the witness is not certain whether the \$808.55 owing as at March 2014 included maintenance costs or how much was for rent for the site. The witness looked in the window and found mold on the walls and the ceiling.

The witness further testified that he posted the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to the door of the tenant's manufactured home on July 7, 2014 and no rent has been paid since.

Analysis

The *Manufactured Home Park Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant must dispute the notice or pay the rent in full within 5 days. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy and must remove the manufactured home from the manufactured home park. In this case, I accept the testimony of the landlord's witness that he posted the notice to the door of the manufactured home on July 7, 2014. The *Act* states that documents served in that manner are deemed to be served 3 days later. Therefore, I find that the tenant has been served with the notice in accordance with the *Act*. The tenant has not disputed the notice and has not attended the hearing, and has not paid the rent. Therefore, I find the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession.

With respect to the monetary order for unpaid rent, the landlord's agent and the landlord's witness were not able to explain the arrears of \$808.55 as at March, 2014 contained in the schedule and therefore I am not satisfied of what portion, if any of that amount is for unpaid site rental or maintenance costs that the landlord may or may not be entitled to. I am satisfied however that the tenant has not paid any rent for the months of April through November, 2014, and that the amount of rent payable was

\$457.69 per month until June 1, 2014 when it was increased to \$467.76. I find that the landlord has established a monetary claim as against the tenant for unpaid rent in the amount of \$3,721.94.

The *Act* specifies that parties may claim recovery of the filing fee associated with making a claim but does not permit recovery of legal fees. Therefore, I find that the landlord is entitled to recovery of \$100.00 for the cost of filing the application.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 60 of the *Manufactured Home Park Tenancy Act* in the amount of \$3,821.94.

These orders are final and binding and may be enforced.

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: November 05, 2014

Residential Tenancy Branch

