



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 664299 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to recover the filing fee for the cost of making the Application.

Preliminary Issues

An agent for the Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony as well as documentary evidence in advance of the hearing. There was no appearance for the Respondents named on the Landlord's Application for the 40 minute hearing and no submission of written evidence from them prior to this hearing.

As a result, I turned my mind to the service of the documents for this hearing by the Landlord. The Landlord testified that she served a copy of the Application and the Notice of Hearing documents to the Respondents by registered mail on January 16, 2015. The Landlord provided the Canada Post tracking number as evidence for this method of service.

The Landlord explained that the deceased Tenants' ("CN" and "JN") son in law ("WD") had assumed responsibility of this tenancy in 2010. Although WD did not reside in the mobile home, WD continued to make rental payments for the tenancy. The Landlord contacted WD by telephone on December 11, 2014 about unpaid rent payments for October, November and December 2014. During this telephone conversation, the Landlord informed WD that she needed his address in order to serve him documents because she wanted to pursue the matter through dispute resolution. The Landlord testified that WD provided her with his mailing address and this is the address that she used to register mail him a copy of her Application and notice of this hearing.

The Landlord testified that she had also attached the documents to the Respondent's mobile home on the same date to ensure that there would be no issues regarding the service on the Respondents. The Landlord provided a photograph which indicates documents posted to a door.

Section 83(a) of the *Manufactured Home Park Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. A party cannot avoid service by a neglect or failure to pick up mail. Therefore, I am satisfied that the Landlord pursued proper steps to serve the parties named on the Application and I find that the Respondents were deemed served in accordance with the Act on January 21, 2015 by registered mail.

The Landlord testified that since making her Application, no rent for February 2015 has been paid and requested to increase her monetary claim for unpaid rent. Pursuant to Section 57(3) (c) of the Act, I amended the Landlord's Application to increase her monetary claim for unpaid rent to the amount of \$1,646.80.

The hearing continued in the absence of the Respondents and I considered the undisputed evidence of the Landlord in this decision as follows.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The Landlord testified that to her knowledge and from the written tenancy agreement, the tenancy for the rental site for the two deceased Tenants, CN and JN, started on August 1, 2006 on a month to month basis.

The Landlord testified that they bought the mobile home park in January, 2011 at which point they took over the tenancy. The Landlord testified that the previous owners explained that the Tenants had passed away within a week of each other in August, 2010 and that their son in law, WD, had taken over the tenancy and was continuing to pay rent, even though it appeared that he was not residing in the mobile home..

The Landlord testified that they received monthly rent in the form of a direct deposit from WD during the course of the next four years. The Landlord explained that they had no personal contact with WD but when it came to issues of maintenance of the site and

notices of rent increases, they would contact WD by telephone, text message or e-mail to discuss arrangements which were made by WD accordingly.

The Landlord testified that the current monthly rent amount due under the agreement is \$329.36 which is payable by WD on the first day of each month. The Landlord explained that she failed to receive any rent for the rental site on October 1, 2014. As a result, she completed a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), on October 20, 2014.

The Landlord testified that she contacted WD and informed him of the unpaid rent who then explained that there had been some mix up and that he would make arrangements to have the rental arrears paid. The Landlord testified that she held off from serving the Notice to WD. However, after November 2014 rent was also unpaid, she served him with the October 20, 2014 Notice for October 2014 unpaid rent.

The Notice was provided into written evidence and shows an expected date of vacancy of November 5, 2014, for \$329.36 in unpaid rent that was due on October 1, 2014.

The Landlord testified that the Notice was served on November 8, 2014 by attaching it to the door of the mobile home. The Landlord's agent who attached the Notice provided a completed a Proof of Service document verifying this method of service.

The Landlord testified that WD was in rent arrears for the rental site for a total amount of \$1,646.80 which comprised of unpaid rent for the months of October, November and December 2014, and January and February 2015.

The Landlord testified that WD had been in contact with her after she had informed him that she had issued the Notice, to explain that there were complications with the execution of the Tenants' will. However, the Landlord now requests an Order of Possession and a Monetary Order for unpaid rent.

Analysis

Section 1 of the Act provides for the definition of a Tenant in manufactured home park tenancies which includes the estate of the deceased Tenant.

While the Tenants for this tenancy have passed away, the Act contemplates that the tenancy would continue in the event that the tenant has passed away. Therefore, I find that the estate of the deceased Tenants continues to be responsible for meeting the terms and obligations of the tenancy agreement, in particular the payment of rent.

I accept the Landlord's evidence that WD assumed responsibility for the Tenants' tenancy and continued to make rental payments to the Landlord to honour the terms of the tenancy.

Section 20(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement.

Sections 39(4) and (5) of the Act provides that within five days of a tenant receiving a Notice, the tenant must pay the overdue rent or make an Application to cancel the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the end of the tenancy and they must vacate the rental site on the date to which the Notice relates.

Having examined the Notice, I find that the contents on the approved form complied with Section 45 of the Act.

I also accept the Landlord's oral and written evidence that the Notice was served to the Tenant by attaching it to the door of the mobile home and that WD had been informed by the Landlord of the Notice.

Section 83(c) of the Act provides that a document served by attaching it to the door is deemed to have been received three days after. As the Notice was posted to the mobile home on November 8, 2014, I find that the Notice is deemed to have been received on November 11, 2014. As a result, I further find that the effective vacancy date on the Notice is automatically corrected from November 5, 2014 to November 22, 2014 pursuant to Section 46 of the Act.

As the Respondents failed to pay the Landlord the outstanding rent or make an Application to dispute the Notice, pursuant to Section 39(5) of the Act, I find that they are conclusively presumed to have accepted that the tenancy ended on the corrected vacancy date of the Notice.

As the effective vacancy date of the Notice has passed, the Landlord is entitled to an immediate Order of Possession and a Monetary Order for the unpaid rent in the amount of **\$1,646.80**. Copies of these orders are attached with the Landlord's copy of this decision and must be served to the Respondents. The Respondents should note that the Landlord's costs for enforcing these orders if they fail to comply with them may be recovered from them.

As the Landlord has been successful in this matter, the Landlord is also entitled to the \$50.00 filing fee for the cost of this Application pursuant to Section 65(1) of the Act. Therefore, the total amount payable to the Landlord is \$1,696.80.

Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession for the manufactured home park site, effective **two days after service on the Respondents**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Respondents fail to remove the mobile home.

I also grant the Landlord a Monetary Order pursuant to Section 60 of the Act in the amount of **\$1,696.80**. This order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the payment is not made.

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 04, 2015

Residential Tenancy Branch

