



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1027110 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR, MNR, MNDC, FF

Introduction

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

- an Order of Possession for unpaid rent, pursuant to section 48.
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 60;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 65.

The landlord PG ("landlord"), the female tenant ("tenant") and the "male tenant" (collectively "tenants") attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the manager and caretaker for the manufactured home park and that he had authority to represent the "landlord company" named in this application, as an agent at this hearing (collectively "landlords").

The landlord testified that the tenants were served with a 10 Day Notice for Unpaid Rent or Utilities, dated March 4, 2015 ("10 Day Notice"), on the same date by way of posting to the tenants' rental unit door. The tenant confirmed receipt of the 10 Day Notice. In accordance with sections 81 and 83 of the *Act*, I find that both tenants were duly served with the landlords' 10 Day Notice.

The landlord confirmed that the tenants were served with the landlords' application for dispute resolution hearing package ("Application") by way of registered mail. The tenant confirmed receipt of the landlords' Application. In accordance with sections 82 and 83 of the *Act*, I find that both tenants were duly served with the landlords' Application.

The tenant testified that the landlords were served with the tenants' written evidence package on March 24, 2015, by way of registered mail at the address for service provided by the landlords on the 10 Day Notice. This address is the same address for service provided by the landlords in their Application. The tenants provided a Canada Post receipt and tracking number as proof of service with their written evidence. The landlord testified that he did not receive the tenants' written evidence package. As the tenants served the written evidence more than 7

days prior to this hearing at an address for service provided by the landlords, I find that in accordance with sections 82 and 83 of the *Act*, the landlords are deemed served with the tenants' written evidence package. During the hearing, I advised both parties that I would be considering the tenants' written evidence package at this hearing and in my decision.

During the hearing, the landlord withdrew the landlords' application for a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement. The landlord confirmed that the tenants had paid rent and late fees in full for March and April 2015 and that these were the only monetary amounts sought in the landlords' Application. Accordingly, these portions of the landlords' Application are withdrawn.

Issues to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The tenant testified that this month to month tenancy began on November 25, 2000. The landlord testified that the tenants ceased occupying the rental unit around March 15, 2015, while the tenant maintained that it was March 30, 2015. Monthly rent in the amount of \$560.00 is currently due on the first day of each month. The tenants own their manufactured home and rent the manufactured home site ("site") from the landlord.

The landlord did not have a copy of the tenancy agreement at the time of the hearing but the tenant stated that a written tenancy agreement governed this tenancy. Neither party provided a copy of the tenancy agreement for this hearing. The landlord testified that the manufactured home park ("park") was sold to the landlord company in February 2015 and that this tenancy was transferred to the landlord company at that time. The landlord confirmed that the park was previously owned by his father and another landlord company (collectively "former landlords").

The landlords issued the 10 Day Notice, indicating that rent in the amount of \$560.00 was due on March 1, 2015. The 10 Day Notice indicates an effective move-out date of March 14, 2015. The tenants dispute that rent was owed for March 2015 because they were offered a free site rental while they were acting as park managers for the former landlords. The tenants provided a letter, dated May 13, 2004, from the former landlords who owned and managed the park until February 2015. The letter indicates that the tenants are appointed as park managers effective on July 1, 2004 on a month to month basis until such time as either party provides one clear month's written notice of termination. The letter further states that during their time as managers, the tenants would be entitled to free monthly rent for the site. The tenants provided another letter, dated February 25, 2015, that they provided to the former landlords, indicating that they were resigning as park managers effective on April 1, 2015, which is more than one month's written notice.

The landlord stated that he issued the 10 Day Notice because he was told to do so by the owners of the landlord company. The landlord stated that the owners of the landlord company were new to this tenancy and were unaware of the arrangement between the former landlords and the tenants regarding the free site rental. The landlord stated that the former landlords advised the tenants at the end of January 2015, that the park was being sold to new owners and that the tenants would be required to pay rent as of March 1, 2015, because they were no longer park managers. The landlord stated that the former landlord then left the country. The tenant stated that no written notice was provided by the landlord to the tenants, indicating that their park manager positions were being terminated or that they were required to begin paying rent for the site on March 1, 2015. The landlords did not provide any written evidence with their Application, indicating the termination of the tenants' park manager duties or their requirement to pay rent as of March 2015. The landlord stated that the former landlord must have provided written notice to the tenants. The landlord further indicated that he offered to provide written notice to the tenants, but they refused the notice. The tenants denied refusing any written notice from the landlords. The landlord also indicated that the tenants were not acting as park managers during March 2015 because he was doing their duties, so they should not be entitled to the free site rental for this month. The tenant testified that the landlord advised her on February 27, 2015, that the tenants could no longer act as park managers, despite their willingness to continue to do so. The tenant stated that both tenants continued to perform some manager duties during March 2015, as the male tenant performed litter pick-up and other park occupants would approach both tenants for assistance as managers.

The tenants dispute that they owe rent for March 2015 and stated that they only owed rent as of April 1, 2015 when they were no longer park managers and were still using the site. Both parties agreed that the tenants paid a total of \$1,145.00 on March 30, 2015, for March and April 2015 rent as well as a \$25.00 late fee for March 2015. The tenant stated that the tenants paid rent for March 2015 in the hope that the landlords would allow their new homebuyers, to whom they sold their manufactured home on April 9, 2015, to move into the home without any problems. The tenants stated that the landlords have not allowed these new homebuyers to move into the home and occupy the site. The landlord denied any knowledge regarding the sale of the tenants' manufactured home or the fact that the tenants wanted new people to move into their home.

The landlord stated that the landlords require an order of possession in order to have the tenants' manufactured home removed from the site. The landlord stated that the tenants are required to occupy and reside in the rental unit as per their tenancy agreement. He indicated that the tenants vacated the manufactured home and are using the landlords' site while the manufactured home is vacant. The tenants state that while they do not live at the manufactured home at this time, they attend at the site frequently in order to mow the lawn and retrieve their mail.

The landlords also seek to recover the \$50.00 filing fee for this Application.

Analysis

Section 39(1) permits a landlord to end a tenancy by giving a 10 Day Notice if rent is unpaid on any day after it is due. The landlord issued the 10 Day Notice indicating that rent for March 2015 in the amount of \$560.00 was unpaid. The tenants dispute that they owe rent for March 2015. The tenants provided written evidence from the former landlord that they did not owe rent for the site while they were acting as park managers.

The tenants provided written evidence that they provided one month's written notice to the landlords of their resignation as park managers effective on April 1, 2015. Although the park changed ownership in late February 2015, the tenants provided their written notice on February 25, 2015, to the landlord who appeared at this hearing, who is named in this Application and who is still the current landlord of the park as a manager and caretaker. The tenants were only advised on February 27, 2015, after providing their resignation notice, that the park was under new ownership. The tenants provided written evidence in the form of a letter, dated February 27, 2015, from the new landlords to the tenants, that the park was under new ownership and that the individual landlord named in this Application is the new caretaker and all rent cheques should be provided to him. The individual landlord named in this Application was required to communicate the details of the above park manager free rent agreement with the new landlord company. The tenants provided proper notice to the appropriate landlords, regarding their resignation. The landlords did not provide the tenants with one clear month's written notice that the tenants' positions as park managers were being terminated by the landlords and that they owed rent effective on March 1, 2015.

On a balance of probabilities, I find that the tenants did not owe rent of \$560.00 for March 2015. The tenants only owed rent as of April 1, 2015, when they ceased their job duties as park managers. The tenants paid their rent for April 2015 prior to the due date. The March 2015 rent that is the subject of the 10 Day Notice, was not due for this tenancy.

Although the tenants paid the rent and late fee for March 2015, I do not find this to be an admission by the tenants that they owed rent for March 2015. I accept the tenant's evidence that this rent was paid in order for the tenants' new homebuyers to be able to occupy the site because the landlords were refusing to allow this occupation. I found the tenant to be a credible and forthright witness. By contrast, I found that the landlord was less forthright and credible, often changing his testimony and providing conflicting information throughout the hearing.

Therefore, the landlords' application for an order of possession for unpaid rent is dismissed. Accordingly, I cancel the landlords' 10 Day Notice, dated March 4, 2015, and I deny an order of possession to the landlords. This tenancy continues until it is ended in accordance with the *Act*.

As the landlords were unsuccessful in this Application, they are not entitled to recover the \$50.00 filing fee from the tenants. The landlords must bear their own cost for the filing fee.

Conclusion

The landlords' application for an order of possession and to recover the filing fee is dismissed. The landlords' 10 Day Notice, dated March 4, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlords' application for a monetary award for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, is withdrawn.

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 23, 2015

Residential Tenancy Branch

