



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0849226 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent, a monetary order for unpaid rent, and to recover the filing fee for the Application, made under the *Manufactured Home Park Tenancy Act* (the “Act”).

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. The Tenant agreed he had received the evidence of the Landlord. The Tenant did not submit any documentary evidence for the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession and monetary relief?

Background and Evidence

This tenancy began on April 1, 2009, with the parties entering into a written tenancy agreement, and indicates two people will be living in the manufactured home on the rental site. The rent was initially \$260.00 per month, and is currently \$338.98. There is a \$25.00 penalty for late payment of rent.

The Agent for the Landlord testified that there has been significant issues with the Tenant paying their rent for the various pad rentals they have at the park for several months.

Both parties agree that the Tenant has five pads rented in the park. However, during the hearing I explained to both parties that I was only dealing with the one rental site.

The Agent for the Landlord testified that the Tenant began being late paying rent in January of 2015, and he issued four or five 10 day Notices for non-payment of rent to the Tenant.

The Agent testified that he served the Tenant a 10 day Notice to End Tenancy for non-payment of rent on May 3, 2015, by posting it to the door of the home on the rental site (the "Notice"). This was the Notice before me. The Landlord testified that when he drove by the Tenant's manufactured home about an hour later, the Notice was taken down.

The Notice indicates that the Tenant owes \$363.98 in rent, which includes a \$25.00 late fee. The Landlord has asked for an additional month of rent for June 2015, as well as the late fee, as the Tenant did not pay June rent either.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Agent for the Tenant testified that he did not get the Notice himself. He testified he was out of the country. The Agent for the Tenant agreed he had seen the Notice in the evidence that the Landlord had served the Tenant prior to the hearing.

The Tenant's Agent further testified that he had not paid the rent because the Landlord had not supplied services to the other homes the Tenant has in the park. He alleges that initially the telephone had been provided by the Landlord but the service has not worked well and the Tenant wanted it fixed. The Agent for the Tenant also testified that the Landlord was not providing water to one or two of the other homes the Tenant has in the park.

The Agent testified that was why the Tenant had withheld the rent. He testified he is not a person who does not pay his bills.

The Agent for the Tenant testified he had tried to talk to the Landlord about the issues and his rent, but he did not appreciate being yelled at by the Agent for the Landlord.

In reply, the Agent for the Landlord testified that the Agent for the Tenant had not talked to him about this particular site and he testified that the Tenant's Agent was not out of the country when the Notice was posted. He testified he saw the Agent for the Tenant on a Bobcat around this time.

The Landlord's Agent testified he had also text messaged the spouse of the Agent of the Tenant, informing her that he was putting the Notice on the door of the home on the rental site. The Landlord suggested that the daughter of the Agent for the Tenant may have taken down the Notice, as she had taken the other 10 day Notices to End tenancy which were served earlier on the home or served personally.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 39 of the Act to have accepted that the tenancy ended on the effective date of the Notice.

I accept the evidence of the Landlord that the Notice was served by posting on the door of the rental unit. Under the Act the Notice is deemed served three days later. The Tenant had insufficient evidence to prove he was out of the country at the time the Notice was posted, such as a copy of an airline ticket or boarding pass etc. Therefore, I find the deemed service provisions apply and the Tenant was deemed served three days after posting.

Under section 20 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent, such as an order from an Arbitrator reducing rent.

Therefore, I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I further find that the Landlord has established a total monetary claim of **\$777.96**, comprised of unpaid rent for May and June, two late payment fees of \$25.00 each, and the \$50.00 fee paid by the Landlord for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenant withheld rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession and is granted a monetary order for the balance due of \$777.96

This decision is final and binding on the parties, except as otherwise provided under the Act, and 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: June 29, 2015

Residential Tenancy Branch

