



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0950685 B.C. LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

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; and
- a monetary order for unpaid rent, pursuant to section 60.

The tenant did not attend this hearing, which lasted approximately 28 minutes. The landlord, SM ("landlord") attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed that he is the manager and part shareholder of the landlord company named in this application and that he has authority to represent the landlord company as an agent at this hearing. "Witness CM," who is the landlord's wife, testified at this hearing on behalf of the landlords.

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package ("Application") on June 17, 2015 by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing to confirm this service. The landlord stated the package was sent to the tenant's post office box address rather than his trailer address because this is the method in which mail is received in the manufactured home park ("park"). The landlord stated that the tenant received and signed for the package. In accordance with sections 82 and 83 of the *Act*, I find that the tenant was deemed served with the landlords' Application on June 22, 2015, five days after its registered mailing.

The landlord testified that the tenant was served with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated June 2, 2015 ("10 Day Notice"), on the same date, by way of posting to his door. The landlord provided a signed and witnessed proof of service statement with the landlords' Application. Witness CM testified that she witnessed this posting and that the 10 Day Notice was removed from

the tenant's door the next day after its posting. In accordance with sections 81 and 83 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on June 5, 2015, three days after its posting.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord testified that he does not know when this month-to-month tenancy began because the tenant was already living on the manufactured home site (site") when the landlord company assumed this tenancy in December 2011. The landlord stated that monthly rent in the amount of \$200.00 is payable on the first day of each month. The landlord confirmed that the tenant owns the manufactured home ("trailer") which is located on the site that is owned by the landlords. The landlord stated that a written tenancy agreement exists for the tenancy with the former landlord but that the tenant refused to sign a new tenancy agreement with the new landlords. The landlord stated that he does not know whether the tenant is still residing in the trailer on the site.

The landlords submitted a copy of the 10 Day Notice, which indicates an effective move out date of June 12, 2015. The notice states that rent in the amount of \$1,010.00 was due on March 1, 2015. Handwritten notations are included on the 10 Day Notice which indicates "rent for March, April, May June" and "late fees for Dec, Jan, Feb, Mar, April, May" and "rent \$800.00" and "late fees \$210.00." The landlord stated that the \$1,010.00 rent amount on the 10 Day Notice includes rent of \$200.00 for each month from March to June 2015 as well as \$35.00 late fees for each month from December 2014 to May 2015. When questioned as to why a due date of March 1, 2015 was indicated when future amounts from April to June 2015 were also sought, the landlord was confused and stated that he must have included an incorrect date.

The landlords seek an order of possession, a monetary order of \$800.00 for unpaid rent and \$140.00 in late fees, and to recover the \$50.00 filing fee from the tenant. The landlord stated that rent of \$200.00 and late fees of \$35.00 are unpaid for each month from March to June 2015. The landlord stated that no payments have been made by the tenant since February 2015.

Analysis

Section 46(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 a 10 Day Notice on June 2, 2015. The rent due date is indicated as March 1, 2015 but includes future amounts from April to June 2015. Further, the 10 Day Notice is unclear as it provides a number of different notations regarding rent and late fees. For example, the landlord testified that late fees of \$140.00 are currently outstanding rather than the \$210.00 indicated on the notice.

On a balance of probabilities, I find that the tenant did not have proper notice of the amount of rent due on the 10 Day Notice, in order to take corrective action under section 46(4) of the *Act*, to either pay any outstanding rent or make an application for dispute resolution. Therefore, the landlords' application for an order of possession for unpaid rent based on the 10 Day Notice, dated June 2, 2015, is dismissed without leave to reapply. The landlords' 10 Day Notice, dated June 2, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlord stated that the tenant signed a tenancy agreement with the former landlord. However, the landlord did not provide a copy of the written tenancy agreement indicating that rent of \$200.00 is payable each month or indicating the amount of late fees as \$35.00 per month maximum. The tenancy agreement should have been available to the landlord at the time of this hearing and should have been submitted prior to this hearing. While I do not disbelieve the landlord's testimony regarding the rent and late fees, oral evidence provided in the place of available documentary evidence is given less weight as it is inherently less reliable. This is especially the case where documentary evidence is available that could easily substantiate the landlords' case: the best evidence available should be provided.

The landlord was also unable to justify the late fees being sought from the tenant. The landlord stated that the late fees are indicated on the park rules document that was included with the landlords' Application. Clause 2 of the rules indicates that \$5.00 per day will be charged by the landlord as a surcharge if rent is not paid on time. However, the landlord indicated that the maximum amount that could be charged for late fees was \$35.00 per month as per the *Act*. This amount was not indicated on the park rules document. When questioned as to which provision of the *Act* the landlord was referring to, the landlord did not know and indicated that he was told by the Residential Tenancy Branch ("RTB") to apply for late fees of \$35.00 per month. Sections 5(1)(d) and (2) of the *Manufactured Home Park Tenancy Regulation* indicates that an administration fee of \$25.00 maximum can be charged for late payment of rent only if this amount is specifically indicated in the tenancy agreement. The landlord did not provide a tenancy agreement indicating this amount and the park rules do not indicate a maximum amount for late fees.

On a balance of probabilities, I find that the landlord's evidence was insufficient to demonstrate the amount of rent or late fees potentially owed by the tenant for this tenancy. Accordingly, I dismiss the landlords' application for a monetary award for unpaid rent and late fees with leave to reapply.

Conclusion

The landlords' application for an order of possession for unpaid rent based on the landlords' 10 Day Notice, dated June 2, 2015, is dismissed without leave to reapply.

The landlords' 10 Day Notice, dated June 2, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlords are at liberty to make another application for an order of possession for unpaid rent upon issuing another 10 Day Notice that is valid.

I dismiss the landlords' application for a monetary award for unpaid rent and late fees with leave to reapply.

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: August 21, 2015

Residential Tenancy Branch

