



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Seabreeze MHP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

OPR

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the Landlord has requested an Order of possession based on unpaid rent.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed; the hearing process was explained to the parties and they were each affirmed. The parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present written evidence and to make submissions during the hearing.

The tenant confirmed receipt of the landlords' hearing documents and evidence on August 4, 2015. The tenant did not make a written submission.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession as the result of unpaid rent?

Background and Evidence

The tenancy agreement commenced in 1991. Site rental is currently \$403.00 per month due on or before the first day of each month. A copy of the tenancy agreement supplied as evidence did not include a copy of the annex A referenced or indicate the day in the month rent is due. The tenant did not dispute the rent due date provided by the landlord.

The tenant confirmed receipt of a ten day Notice to end tenancy for unpaid rent on June 8, 2015. The Notice was issued on June 4, 2015 and had an effective date of June 19, 2015. The landlord could not recall the date the Notice was posted to the tenants' door.

The Notice ending tenancy indicated that the Notice would be automatically cancelled if the landlord received \$506.00 within five days of service. The Notice included unpaid rent for May and June 2015. The Notice also indicated that the tenant was presumed to

have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The tenant confirmed he has not paid \$103.00 owed in May and that no rent has been paid since a partial payment was made in May 2015. The tenant has not disputed the Notice.

There was no dispute that on June 8, 2015 the tenant issued a cheque to the landlord in the sum of \$506.00 which was returned as either NSF or that a stop payment was placed on the cheque. The tenant confirmed that the cheque did not process. A copy of this cheque was supplied as evidence. The bottom of the cheque included information from the bank with a "trace info" date of June 11, 2015.

On June 10, 2015 the tenants' mother became aware of the non-payment of rent through a friend of the tenants; she then called the landlord with an offer to pay the rent. The landlord and mother agreed that call could have been placed on June 13, 2015; although neither party was certain of the date. The landlord then had to speak with her supervisor to determine if they could accept a rent payment from a third party. The tenant was not aware that his mother was making this offer of payment.

On June 24, 2015 the landlord communicated with the tenants' mother and asked that she give the rent to the tenant and that he could then make the payment. The landlord declined to accept payment directly from the tenants' mother.

The tenant issued a cheque on July 1, 2015 in the sum of \$912.00 for rent due between May and July 2015. That cheque was returned as NSF. A receipt for use and occupancy only was issued to the tenant on July 1, 2015 and a copy was supplied as evidence. A copy of the cheque and bank notice of NSF status of the July 1, 2015 cheque was supplied as evidence.

The tenant said he did not pay his rent as the result of a long-standing issue over a burst pipe. The tenants' other witness was prepared to testify in relation to the pipe dispute, not unpaid rent. I did not hear from that witness.

Analysis

Section 39(1) of the Act stipulates that a ten day Notice to end tenancy for unpaid rent is effective ten days after the date that the tenant receives the Notice. As the landlord was unable to provide the date the Notice was posted to the tenants' door I find that the tenant received the Notice on June 8, 2015; the date confirmed by the tenant.

As the tenant received the Notice on June 8, 2015 I find that the effective date of the Notice, June 19, 2015 complies with the Act.

I have considered the tenants' failure to pay the rent owed within five days of June 8, 2015 and the tenants' mothers' enquiry regarding rent payment. I find that the onus for payment of rent falls to the tenant and that the tenant recognized this by issuing the June 8, 2015 rent cheque. That rent payment cheque that did not process and the tenant has not paid any rent since May 2015.

The tenants' mother made an enquiry regarding payment of rent on behalf of her son but there was no attempt made to leave a cheque with the landlord or otherwise provide payment. The tenants' mother was not aware of the details of the eviction Notice, only that her son had not paid the rent and was facing eviction.

I find that the landlord did not intend to delay any payment but that the enquiry made by the tenants' mother was unconventional and needed to be vetted by the agents' supervisor. There was also no definitive evidence before me of the date the landlord and tenants' mother first talked, although they believed it was during the week of June 8, 2015. I am not convinced that the enquiry regarding possible payment was made within five days of June 8, 2015, the date by which rent payment was required.

The tenants' mother made an enquiry but did not attend at the landlord's office to provide payment, nor did she provide her son with that money so that he could make the payment. Further, the tenant had paid the rent by cheque issued on June 8, 2015; but that cheque did not process and appears to have been recorded by the bank as non-negotiable on June 11, 2015.

It is the tenants' failure to pay the rent within the five days of June 8, 2015 that leads me to find that the Notice ending tenancy is effective. The tenants' mother made an enquiry regarding payment of rent but I find, on the balance of probabilities, that there is no evidence of an attempt to pay the rent within five days of June 8, 2015.

There was no dispute that the tenant was served with a Notice to end tenancy for unpaid rent that required the tenant to vacate the rental site. There is no dispute that rent has not been paid in full since April 2015.

Therefore, pursuant to section 39(5) of the Act, I find that the rent has not been paid and that the tenant is conclusively presumed to have accepted that the tenancy has ended effective June 19, 2015.

The landlord has been granted an Order of possession that is effective **two days after it is served upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I note that section 20 of the Act provides:

20 (1) *A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Conclusion

The landlord is entitled to an Order of possession.

This decision is final and binding and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 55(1) of the *Manufactured Home Park Tenancy Act*.

Dated: September 08, 2015

Residential Tenancy Branch