



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OP, MNR, MNSD, FF

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 for unpaid rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that copies of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant via registered mail at the address noted on the application. The registered mail was sent on July 2, 2015 and returned to the landlord marked by Canada Post as unclaimed. During the hearing the landlord provided the Canada Post tracking number, as evidence of service.

Refusal to claim registered mail does not allow a party to avoid service. Therefore, I find that these documents are deemed to have been served in accordance with section 83 of the Act, however the tenant did not appear at the hearing.

Preliminary Matter

I note that the application includes a claim to retain a security deposit. There was no evidence before me that a security deposit was paid. Security deposits are not a requirement of the Manufactured Home Park Tenancy Act.

Issue(s) to be Decided

Is the landlord entitled to compensation for unpaid site rental?

Is the landlord entitled to an Order of possession?

Background and Evidence

The tenancy agreement requires the tenant to pay monthly site rent of \$365.00 due on the first day of each month. Effective May 1, 2015 site rental had increased to \$384.00. A copy of the tenancy agreement, Park Rules and most recent Notice of rent increase were supplied as evidence.

On July 2, 2015 the landlord served the tenant with a copy of a 10 day Notice to end tenancy for unpaid rent. The Notice was placed in the tenants' mail box, in the morning. Within a few days the tenant came to see the landlord; he had a copy of the Notice with him.

The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$793.00 within five days of service. 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, July 13, 2015, unless the tenant filed an Application for Dispute Resolution within five days.

Effective June 1, 2014 the tenant owed \$409.00 and no rent has been paid since this time. The landlord has been applying late fees in the sum of \$25.00 per month. The Park Rules and tenancy agreement are silent on the payment of late fees. The landlord has claimed \$793.00 in unpaid rent for June and July 2015.

The tenant remains in the home on the site; his truck was seen in the last few days.

Analysis

Section 81 of the Act stipulates that a document that is left in the mail box is deemed to be received on the third day after it is placed in the mail box. Therefore I find that the tenant received the Notice to End Tenancy on July 5, 2015.

Section 39(1) of the Act stipulates that a 10 day Notice to end tenancy is effective ten days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on July 5, 2015 I find, pursuant to section 46 of the Act that the earliest effective date of the Notice is July 15, 2015.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to end tenancy that required the tenant to vacate the site on July 15, 2015, pursuant to section 39 of the Act.

Section 39(4) of the Act stipulates that a tenant has five days from the date of receiving the Notice to end tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights. Therefore, pursuant to section 39(5) of the Act, I find that the tenant accepted that the tenancy has ended effective July 15, 2015.

On this basis I will grant the landlord an Order of possession that is effective two days after service to the tenant.

As rent is the most basic term of a tenancy I find that the application is amended to include a claim for unpaid August 2015 rent.

As the claim for unpaid June 2015 rent appears to include fees that are not indicated in the tenancy agreement or Rules I find that the landlord is entitled to compensation in the sum of \$384.00 for each of June, July and August 2015 totaling \$1,152.00. The landlord has been issued a monetary Order. In the event that the tenant does not comply with this Order, it may be served on the tenant, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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.

As the landlord's application has merit I find that the landlord is entitled to recover the \$50.00 filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

The landlord is entitled to an Order of possession based on unpaid rent.

The landlord is entitled to compensation for unpaid June, July and August 2015 site rent in the sum of \$1,152.00.

The landlord is entitled to recover the \$50.00 filing fee from the tenant.

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 01, 2015

Residential Tenancy Branch

