



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VISTA VILLAGE TRAILER PARK 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”).

Only the Agent for the Landlord and the Landlord’s Legal Counsel appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent for the Landlord testified they served each of the Tenants with the Notice of Hearing and their Application for Dispute by sending each of them registered mail on November 10, 2015. Under the Act documents served this way are deemed served five days later. In evidence the Landlord submitted copies of the registered mail receipts and tracking information. I note that refusal or neglect to accept registered mail is not a ground for review under the Act. Therefore, I find both Tenants have been duly served.

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

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

Background and Evidence

Based on the affirmed testimony and evidence of the Agent for the Landlord, I find that the Tenants failed to pay rent for September of 2015, in the amount of \$395.00. The Tenants provided postdated cheques in payment for the site rental and the September cheque was returned due to insufficient funds.

The Agent testified that the Tenants were served with a 10 day Notice to End Tenancy for non-payment of \$395.00 for September rent by registered mail, sent on October 13, 2015 (the "Notice"). Under the Act the Tenants are deemed served with this Notice five days after mailing. In evidence the Landlord submitted copies of the registered mail receipts and tracking information. The information sets out that the Tenants each signed for their registered mail, one on October 20, and the other on October 23, 2015. I find the Tenants have been duly served with the Notice.

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

The Tenants have not paid the rent for September and there is no evidence they filed an Application to dispute the Notice.

The Tenants did pay rent for October and November 2015, although the Landlord issued receipts for use and occupancy only for these payments. I do not find the tenancy was reinstated by the Landlord when they accepted these payments.

The Agent testified that the Tenants also failed to pay rent for December 2015, as this cheque was also returned due to insufficient funds.

The Agent testified that the tenancy agreement includes a \$25.00 fee for NSF cheques, and a late payment fee of up to \$25.00 per month for late rent payments.

In evidence the Landlord submitted copies of the tenancy agreement, indicating the tenancy began on April 1, 2013. There is evidence submitted that the Tenants refused to sign the tenancy agreement. However, there is also evidence the Landlord sent the Tenants copies of the tenancy agreement on three different occasions in February, May and July of 2013, requesting they sign and return the agreements.

Analysis

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

The Tenants have not paid the outstanding rent and did not apply to dispute the Notice and are therefore conclusively presumed under section 39(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice which was October 23, 2015. Due to the service by registered mail the effective date automatically corrected under the Act to October 28, 2015.

Under section 20 of the Act, the Tenants must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenants have some authority under the Act to not pay rent. In this situation the Tenants had no authority under the Act to not pay rent.

The Landlord provided the Tenants with copies of the tenancy agreement and attempted to have the Tenants sign the tenancy agreement several times; however, they refused or neglected to sign it.

I find the Tenants were provided with the tenancy agreement in accordance with the Act. Under the definitions of the Act a tenancy agreement means, "... an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities...". I find that the parties established an oral tenancy agreement based on the standard terms and conditions as set out in the Act and regulations; and on the terms and conditions as set out in the written tenancy agreement. I do not find the Tenants may escape liability under the Act or tenancy agreement by refusing or neglecting to sign the written agreement. I find the terms and conditions as set out in the written agreement and the standard terms under the Act and regulation, establish the terms and conditions of the oral tenancy agreement. I find these were accepted by the Tenants through their compliance with the Act and tenancy agreement, and by payments of rent and their use of the site, pursuant to sections 55 and 84 of the Act.

Based on all the above, and pursuant to section 48 of the Act, I therefore find that the Landlord is entitled to an order of possession effective **at 1:00 p.m. on December 31, 2015**. This order may be filed in the Supreme Court and enforced as an order of that Court.

I find that the Tenants have not paid rent for September 2015. I further find the Tenants failed to pay rent for December 2015. The Tenants are aware that rent is due on the first day of the month under the terms of their tenancy agreement.

I find the Landlord will suffer a loss of rent for the month of December 2015, due to the Tenants' non-compliance, pursuant to section 60 of the Act. Therefore, I allow the Application to be amended to include one additional month of rent for December 2015, pursuant to sections 57 and 60 of the Act. I also find the Landlord is entitled to the late payment fees and the NSF fees as agreed to by the parties in their agreement.

Therefore, I find that the Landlord has established a total monetary claim of **\$940.00** comprised of two months of rent at \$395.00 per month, two late payment fees of \$50.00 and two NSF fees of \$50.00, and the \$50.00 fee paid by the Landlord for this application.

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

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenants are conclusively presumed under section 39(5) of the Act 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 effective at 1:00 pm December 31, 2015, and is granted a monetary order for the balance due of \$940.00.

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 *Residential Tenancy Act*.

Dated: December 23, 2015

Residential Tenancy Branch

