



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Lombardy Management Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession, a monetary Order for unpaid rent, and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on December 03, 2015 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted to the Residential Tenancy Branch on December 04, 2015 were sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 82 of the *Manufactured Home Park Tenancy Act (Act)*; however the Tenant did not appear at the hearing.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began on December 06, 2014;
- the Tenant agreed to pay monthly rent of \$315.00 by the first day of each month;
- the Tenant did not pay any rent for October, November, or December of 2015;
- the Tenant still owes \$5.00 in rent from August of 2015;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of November 26, 2015, was posted on the door of the rental unit on November 16, 2015; and
- she believes the Tenant is still occupying the site.

The Landlord is seeking a monetary for unpaid rent, in the amount of \$950.00.

The Landlord is seeking \$75.00 in "late fees" as the Tenant did not pay rent when it was due. The Agent for the Landlord stated that the Tenant did not sign a tenancy agreement.

Analysis

On the basis of the undisputed evidence, I find that:

- the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$315.00 by the first day of each month;
- the Tenant has not paid rent for October and November of 2015; and
- the Tenant still owes \$5.00 in rent for August of 2015.

As the Tenant is required to pay rent when it is due, pursuant to section 20(1) of the *Act*, I find that the Tenant must pay \$635.00 in rent to the Landlord for outstanding rent from August, October, and November of 2015.

If rent is not paid when it is due, section 39(1) of the *Act* entitles landlords to end the tenancy within ten days, by providing proper written notice. On the basis of the undisputed evidence, I find that the Ten Day Notice to End Tenancy, served pursuant to section 39 of the *Act*, was posted at the rental unit on November 16, 2015.

Section 83 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant is deemed to have received the Notice to End Tenancy on November 19, 2015.

Section 39(1) of the *Act* stipulates that a Ten 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 November 19, 2015 I find that the earliest effective date of the Notice was November 29, 2015.

Section 46 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was November 29, 2015.

Section 39 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. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 39(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession.

As the Tenant did not vacate the rental unit on November 29, 2015, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the full month of November, I find that the Landlord has been fully compensated for that month.

On the basis of the undisputed evidence, I find that no rent has been paid for December of 2015. I find that the Tenant must compensate the Landlord for the month of December, in the amount of \$315.00, as she has remained in possession of the site for the majority of the month and the Order of Possession granted will permit her to remain on the site for the remainder of the month.

Section 5(1)(d) of the *Manufactured Home Park Regulation (Regulation)* stipulates that a landlord can charge a fee of not more than \$25.00 for a late rent payment. Section 5(2) of the *Regulation* stipulates that a landlord can only charge this fee if the tenancy agreement provides for this fee.

The undisputed evidence is that the Tenant did not sign a tenancy agreement. As the parties did not enter into a written tenancy agreement I find that section 5(2) of the *Regulation* prohibits the Landlord from collecting a late fee. I therefore dismiss the Landlord's claim for late fees.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective **at 1:00 p.m. on December 31, 2015**. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$1,000.00, which is comprised of \$950.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$1,000.00. 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.

This decision 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 29, 2015

Residential Tenancy Branch

