



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKBRIDGE LIFESTYLE COMMUNITIES INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent. The Landlord also applied to recover the filing fee from the Tenant.

An agent for the company Landlord (the "Landlord") named on the Application appeared for the hearing and provided affirmed testimony as well as documentary evidence. There was no appearance by the Tenant for the ten minute duration of the hearing and no submission of written evidence prior to this hearing. As a result, I turned my mind to the service of the documents by the Landlord.

The Landlord testified that a copy of the Application and the Notice of Hearing documents were served to the Tenant by registered mail on December 4, 2015. The Landlord provided a copy of the Canada Post tracking number into written evidence to verify this method of service.

Section 83(a) of the *Manufactured Home Park Tenancy Act* (the "Act") provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find the Tenant was deemed served with the required documents on December 9, 2015 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Landlord.

The Landlord testified that since the time of making the Application, the Tenant has also failed to pay rent for January 2016. Therefore, the Landlord requested to include unpaid rent for this month as part of the monetary claim. As a result, I amended the Landlord's Application to reflect the claim amount of \$2,376.90 pursuant to my authority under Section 57(3) (c) of the Act.

Issue(s) to be Decided

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

Background and Evidence

The Landlord testified that this tenancy started on March 1, 2015. A written tenancy agreement was completed which established rent payable in the amount of \$792.30 on the first day of each month.

The Landlord testified that the Tenant failed to pay rent for November 2015. As a result, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") by posting it to the Tenant's door on November 17, 2015. The Notice was provided into written evidence and shows a vacancy date of November 29, 2015 due to \$809.60 payable on November 1, 2015. The Landlord confirmed that the amount of rent due on the Notice was a clerical error and the amount should have been \$792.30.

The Landlord testified the Tenant also failed to pay rent for December 2015 and January 2016. Therefore, the total amount the Landlord now seeks to recover from the Tenant is \$2,376.90 relating to three months of unpaid rent.

Analysis

Section 20(1) of the Act requires a tenant to pay rent when it is due under a tenancy agreement whether or not the landlord complies with the Act. Sections 39(4) and (5) of the Act provides that within five days of a tenant receiving a Notice, the tenant must pay the overdue rent or make an Application to cancel the Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the end of the tenancy and they must vacate the rental site on the date to which the Notice relates.

Having examined the Notice, I find the contents on the approved form complied with Section 45 of the Act. I find that an incorrect amount of rent payable on a Notice does not make it invalid.

I also accept the Landlord's oral evidence that the Notice was served to the Tenant by attaching it to the Tenant's door. Section 83(c) of the Act provides that a document served by attaching it to the door is deemed to have been received three days later. As the Notice was posted on November 17, 2015, I find that the Notice is deemed to have been received by the Tenant on November 20, 2015. Accordingly, I find the effective

vacancy date on the Notice is automatically corrected from November 29, 2015 to November 30, 2015 pursuant to Section 46 of the Act.

As there is no evidence before me that the Tenant paid the rent or disputed the Notice, pursuant to Section 39(5) of the Act, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the corrected vacancy date of the Notice.

As the effective vacancy date of the Notice has now passed, the Landlord is entitled to a **two day** Order of Possession. This order must be served on the Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails to vacate the rental site.

I also award the Landlord unpaid rent in the amount of \$2,376.90. As the Landlord has been successful in this matter, the Landlord is also entitled to the \$50.00 filing fee for the cost of making this Application pursuant to Section 65(1) of the Act.

Therefore, the Landlord is issued with a Monetary Order for a total amount of **\$2,426.90**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if payment is not made. Copies of the above orders are attached to the Landlord's copy of this decision.

Conclusion

The Tenant has failed to pay rent under this tenancy. Therefore, the Landlord is granted an Order of Possession for the rental site effective two days after service on the Tenant. The Landlord is also granted a Monetary Order in the amount of \$2,426.90 for unpaid rent and recovery of the filing fee.

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: January 07, 2016

Residential Tenancy Branch

