



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- an order of possession for unpaid rent pursuant to section 55;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 11:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions.

The landlord testified that on August 25, 2016, a copy of the Application for Dispute Resolution and Notice of Hearing was left with an adult R.K who apparently resides with the tenant. On behalf of the landlord, M.R. testified that he and P.M. personally served R.K. at the tenant's residence and at the time of service, R.K. advised them that he resides with the tenant. The landlord provided a statement signed by R.K. acknowledging service on behalf of the tenant.

Based on the above evidence, I am satisfied that the tenant was served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to section 89 of the Act. The hearing proceeded in the absence of the tenant.

Preliminary Issue – Amendment to application

Section 57(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlords request to amend the application to correctly identify the application as being made under the Residential Tenancy Act as the landlord owns the

manufactured home. The request was granted and the application is amended as being made under the Residential Tenancy Act.

Issues

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The current landlord took over ownership of the manufactured home park on July 7, 2016 and notified all tenants of the change of ownership and that future rent payments were to be made to the new owners. The rental unit is a manufactured home which is owned by the landlord and the current monthly rent is \$720.00 payable on the 1st day of each month.

The landlord testified that on August 3, 2016 he served the tenant with the 10 day Notice to End Tenancy for unpaid rent by posting a copy to the door of the rental premises. A witnessed proof of service of this Notice was provided with the application and M.R. testified that he witnessed the Notice being served.

The landlord testified that as per the Notice, the tenant failed to pay rent in the amount of \$720.00 that was payable on August 1, 2016. The tenant did not pay the outstanding amount within 5 days of receipt of the Notice. The tenant did make a payment in the amount of \$700.00 on September 12, 2016 and was issued a receipt for "use and occupancy" only.

Analysis

I am satisfied that the tenant was deemed served with the 10 day Notice to End Tenancy on August 6, 2016, three days after its posting, pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant

does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the “corrected” effective date of the Notice, August 16, 2016.

I accept the landlord’s uncontested evidence and find that the tenant was obligated to pay monthly rent in the amount of \$720.00 but failed to pay rent that was payable on August 1, 2016 and failed to pay the outstanding amount within 5 days of receipt of the Notice.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 55 of the Act.

The landlord’s application to recover the filing fee is dismissed with leave to reapply as it was not served in a manner permitted under the Act for an application for a monetary order.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: October 19, 2016

Residential Tenancy Branch