



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

- an order of possession for unpaid rent pursuant to section 48;
- a monetary order for unpaid rent pursuant to section 60; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 65.

The tenant and landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The tenant confirmed receipt of the landlord's application for dispute resolution. In accordance with sections 81 and 83 of the *Act*, I find that the tenant was duly served with the application.

Preliminary Issue – Amendment of Landlord's Application

The landlord confirmed that she wished to amend the landlord's application to increase her monetary claim to include November 2016 unpaid rent of \$862.50 and the \$25.00 late fee. I find that the tenant should reasonably have known that the landlord would suffer this loss of income if she did not pay the rent or vacate the rental unit to permit the landlord to re-rent the unit. Based on this undisputed evidence and in accordance with section 57(3)(c) of the *Act*, I amend the landlord's application to include a monetary claim for November 2016 unpaid rent and late fee in the total amount of \$887.50.

Issue(s) to be Decided

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

Is the landlord entitled to a monetary award for unpaid rent?

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

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on August 1, 2007 on a month-to-month basis. Rent in the amount of \$862.50 is payable on the first of each month. The tenant continues to reside in the rental unit.

The tenant confirmed receipt of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") dated August 9, 2016, by way of posting to the rental unit door where the tenant resides. The notice indicates an effective move-out-date of August 19, 2016.

The landlord seeks a monetary order of \$3,513.50 for unpaid rent and \$100.00 in late fees accumulated from July 2016 to November 2016. The landlord claimed that the tenant paid a total of \$799.00 in rent for the above five months.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

The tenant agreed that the monetary amount sought by the landlord is the correct amount that remains outstanding.

Analysis

Section 39 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that the tenant was served with an effective notice. As the tenant did not pay the overdue rent or file an application to dispute the notice within five days, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must

move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 48 of the *Act*.

Section 20 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that the current rent for this unit is \$862.50. I find the landlord provided undisputed evidence that the tenant failed to pay full rent from July 2016 to November 2016. Therefore, I find that the landlord is entitled to \$3,513.50 in rent.

Section 5 of the *Regulation* establishes that a landlord may charge an administration fee of \$25.00 of late payment of rent if the tenancy agreement provides for that fee. Based on the tenancy agreement before me, I find the landlord is entitled to the recovery of late fees in the amount of \$100.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$3,713.50.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**.

I issue a monetary order in the landlord's favour in the amount of \$3,713.50.

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: November 24, 2016

Residential Tenancy Branch