



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession and a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The landlord and the tenant attended the hearing, and each gave affirmed testimony. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness.

The landlord has provided evidentiary material but not all of that material was provided to the tenant. The Residential Tenancy Branch Rules of Procedure require a party to provide to the other party all evidence that they wish to rely on, and where a party fails to do so, that material cannot be considered. Therefore, the material not provided to the tenant is not considered, and all other evidentiary material is considered in this Decision.

Issue(s) to be Decided

- Is the landlord entitled under the *Manufactured Home Park Tenancy Act* to an Order of Possession for unpaid rent?
- Has the landlord established a monetary claim as against the tenant for unpaid rent?

Background and Evidence

The landlord testified that this month-to-month tenancy began prior to the landlord purchasing the manufactured home park. When the landlord purchased the manufactured home park the landlord and the tenant, along with the tenant's spouse entered into a new tenancy agreement, a copy of which has been provided. Rent in the amount of \$450.70 was payable in advance on the 1st day of each month.

The landlord further testified that the 2 tenants were husband and wife who separated, and the wife moved out of the manufactured home. No rent was paid for the month of October, 2016 and the landlord caused a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities to be served on the tenants. A copy has been provided and it is dated

October 16, 2016 and contains an effective date of vacancy of October 27, 2016 for unpaid rent in the amount of \$450.70 that was due on October 1, 2016.

The husband passed away and no rent has been paid since the issuance of the notice. Also, the manufactured home has burned down and an investigation is on-going with respect to the suspicious nature of the fire. Once the investigation has concluded, the landlord may be entitled to recovery of loss of rental revenue from the landlord's insurance policy.

The tenant's name is still on the tenancy agreement and no rent has been paid since the issuance of the notice to end the tenancy. The tenant has not served the landlord with an application for dispute resolution disputing the notice.

The landlord's witness testified that he is the manager of the manufactured home park, but does not collect rent. Rent is paid directly to the landlord, and if rent is overdue, the witness follows up with tenants at the request of the landlord.

The landlord's witness received a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities from the landlord by email with instructions to serve it on the tenants. The witness printed the notice and served it by leaving it in the door of the rental unit on October 18, 2016.

The tenant testified that her husband passed away on September 15, 2016. The tenant went to her husband's bank and was told that money could not be taken out of his account.

The manufactured home burned down on November 19, 2016, and the tenant testified that police advised her that they do not believe that the tenant had anything to do with the fire. The tenant has been in touch with the insurance adjuster and is dealing with the remaining debris.

The tenant has no means to pay the outstanding rent, and both insurance companies are dealing with the loss.

Analysis

The *Manufactured Home Park Tenancy Act* states that once served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice. If the tenant fails to do either, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the tenant has not paid the rent in full and has not disputed the notice, and is named in and has signed the tenancy agreement. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlord is entitled to an Order of Possession. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

With respect to the landlord's monetary claim, the parties agree that the insurance companies of the landlord and of the tenant have not yet determined whether or not the landlord will receive any loss of rental income. However, the parties also agree that the manufactured home burned in November, 2016, and therefore, I find that the landlord has established a monetary claim for October and November, 2016 rent. Any further loss of rental revenue may very well be covered by the insurance companies, and in the event that the landlord is not successful in obtaining that loss of rental revenue, once that determination is made, the landlord will be at liberty to make a further application for loss of rental revenue.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlord effective on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlord as against the tenant pursuant to Section 60 of the *Manufactured Home Park Tenancy Act* in the amount of \$1,001.40.

The landlord's application for loss of rental revenue commencing with December, 2016 is hereby dismissed with leave to reapply.

This order is final and binding and may be enforced.

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: December 13, 2016

Residential Tenancy Branch