



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter
DECISION

Dispute codes OPR MNR FF

Introduction

This hearing was convened in response to the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for Orders as follows:

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

The hearing was conducted by conference call. The tenant did not attend this hearing, although I waited until 9:12 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 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 November 23, 2016, a copy of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant by registered mail. The landlord provided a registered mail tracking number in support of service.

Based on the above evidence, I am satisfied that the tenant was deemed served with the Application for Dispute Resolution and Notice of Dispute Resolution Hearing pursuant to sections 82 & 83 of the Act. The hearing proceeded in the absence of the tenant.

Preliminary Issue – Amendment to Landlord's Application

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

At the hearing, the landlord's agent testified that the tenant had not yet vacated the rental unit and therefore asked to amend the claim to include outstanding rent for the months of December 2016 and January 2017. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the

landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

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

This manufactured home park tenancy began in December 2015 and the current monthly rent is \$400.00 payable on the 1st day of each month.

The landlord's agent testified that on September 2, 2016 the tenant was served the 10 day Notice to End Tenancy for unpaid rent or utilities by posting a copy to the door of the rental premises. A witnessed proof of service of this Notice was provided with the application. The landlord's agent testified that the tenant did not pay the outstanding amount of rent as indicated in the Notice within five days of service of the Notice.

The landlord's monetary claim is for outstanding rent in the amount of \$3600.00. The landlord provided an account statement which shows an outstanding balance of \$2950.00 as of November 21, 2016. The landlord amended this amount to include outstanding rent in the total amount of \$800.00 for the months of December 2016 and January 2017 for a total of \$3750.00. The landlord subtracted \$150.00 of late fees from this outstanding balance for a total claim of \$3600.00.

Analysis

I am satisfied that the tenant was deemed served with the 10 day Notice to End Tenancy on September 5, 2016, three days after its posting, pursuant to sections 81 & 83 of the Act.

Section 39 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, September 15, 2016.

I find that the Notice served by the landlord is in compliance with the Act and landlord is entitled to an Order of Possession pursuant to section 48 of the Act.

Section 20 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. I accept the landlord’s uncontested evidence and claim for outstanding rent of \$3600.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$3700.00.

Conclusion

Pursuant to section 48 of the Act, I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 60 of the Act, I grant the landlord a Monetary Order in the amount of \$3700.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 *Manufactured Home Park Tenancy Act*.

Dated: January 04, 2017

Residential Tenancy Branch