



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SMITHERS RIVERSIDE TRAILER PARK LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR

Introduction

On January 29, 2017 the corporate Landlord made an Application for Dispute Resolution by Direct Request (the “Application”) requesting an Order of Possession and a Monetary Order for unpaid rent. This process involves a non-participatory hearing in which findings are made on an undisputed notice to end tenancy for unpaid rent and specific documentary evidence a landlord is required to submit with the Application.

The Application was considered by an Adjudicator on January 26, 2017. In an Interim Decision rendered on the same day, the Adjudicator found there was only sufficient evidence to show that one of the Tenants had been served notice of the Direct Request proceedings.

The Adjudicator also found the Landlord had provided conflicting evidence with respect to the manner in which the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “10 Day Notice”) was served to the Tenant and whether the second Tenant was party to the tenancy agreement. Therefore, the Application was adjourned to reconvene in this participatory hearing to determine these matters and decide the Application.

The Landlord, who was the agent of the corporate Landlord named on the Application, appeared for the hearing and provided affirmed testimony. However, there was no appearance by the Tenants during the 15 minute hearing or any submission of evidence from them prior to the hearing.

The Landlord testified that she served the Notice of Hearing documents for this participatory hearing, which she received from the Residential Tenancy Branch on February 2, 2017, to each Tenant separately by registered mail on February 3, 2017 both to the rental unit address. The Landlord provided the Canada Post tracking numbers into oral and written evidence; these numbers are also recorded on the front page of this Decision.

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 Tenants were deemed served with the required documents on February 8, 2017 pursuant to the Act. The hearing continued to hear the undisputed evidence of the Landlord.

During the hearing, the Landlord requested to amend the Application to recover the filing fee and to increase the monetary claim for February 2017 unpaid rent. As the Tenants would have been aware that the rent for February 2017 was unpaid, I granted the Landlord’s requests and amended the Landlord’s Application pursuant to my authority under Section 64(3) (c) of the Act and Rule 4.2 of the Dispute Resolution Rules of Procedure.

Issue(s) to be Decided

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

Background and Evidence

The Landlord testified that this tenancy started in February 2015 on a month to month basis. A written tenancy agreement was completed showing both names of the Tenants which was signed by one of the Tenants. Pursuant to the tenancy agreement the rent started at \$278.00 and was increased during the tenancy to the current amount of \$286.00. This is payable on the first day of each month.

The Landlord testified that the Tenants failed to pay rent of \$68.00 for November 2016. The Tenants then failed to pay no rent for December 2016 and January 2017. As a result, the Landlord attended the Tenant’s rental unit on January 2, 2017 and served the 10 Day Notice by posting it to the Tenant’s door. The Landlord provided text message conversation between the parties in which the Landlord puts the Tenants on notice that the 10 Day Notice had been served to their manufactured home door.

The 10 Day Notice was provided into evidence and shows a vacancy date of January 12, 2017 due to \$635.00 in unpaid rent that was due on January 1, 2017. The Landlord testified that in addition, the Tenants have failed to pay rent for February 2017. Therefore she now seeks an Order of Possession to end the tenancy and a Monetary Order for the amount of \$921.00.

Analysis

I have carefully considered the undisputed affirmed testimony and the documentary evidence before me in this Decision as follows. I accept that the evidence before me that both Tenants are in a tenancy agreement with the Landlord as Co-Tenants.

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 states that within five days of a tenant receiving a 10 Day Notice, a tenant must pay the overdue rent or make an Application to dispute the 10 day Notice; if the tenant fails to do either, then they are conclusively presumed to have accepted the 10 Day Notice and must vacate the rental unit on the vacancy date.

Having examined the 10 Day Notice provided into evidence, I find the contents on the approved form complied with the requirements of Section 45 of the Act. I accept the undisputed oral evidence that the 10 Day Notice was served to the Tenants by posting it to the Tenant's manufactured home door in accordance with Section 81(g) of the Act on January 2, 2017.

Section 83(c) of the Act provides that a document served by posting it to the door is deemed to have been received three days later. Therefore, the Tenants would have had until January 10, 2017 to either pay the outstanding rent on the 10 Day Notice or make an application to dispute it. There is no evidence before me that the Tenants did either.

As a result, I find the Tenants are conclusively presumed to have accepted the tenancy ended. Accordingly, the Tenants would have had until January 15, 2017 to vacate the rental unit pursuant to the corrected vacancy date on the 10 Day Notice.

As this date has now passed and the Tenants are still residing in the rental unit without paying rent, the Landlord is granted a two day Order of Possession. This order must be served to the Tenants and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenants fail to vacate the rental unit.

In relation to the Landlord's monetary claim for unpaid rent, I accept the Landlord's undisputed oral and written evidence that the Tenants failed to pay rent in this tenancy for the amount claimed. Accordingly I award the Landlord \$921.00 in unpaid rent.

As the Landlord has been successful in this claim, I also award the \$100.00 Application filing fee pursuant to Section 65(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is \$1,021.00. The Landlord is issued with a Monetary Order for this amount which must be served on the Tenants. The Landlord may then file and enforce the order in the Small Claims Division of the Provincial Court as an order of that

court if the Tenants fail to make payment. Copies of both orders for service and enforcement are attached to the Landlord's copy of this Decision.

Conclusion

The Tenants have breached the Act by failing to pay rent. Therefore, the Landlord is issued with a two day Order of Possession to end the tenancy and a Monetary Order for \$1,021.00 to recover unpaid rent and 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 Act.

Dated: February 23, 2017

Residential Tenancy Branch