



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dawson and Sawyer Capital Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution. At the hearing the Agent for the Landlord withdrew the application for a monetary Order for unpaid rent or utilities and to recover the fee for filing this Application for Dispute Resolution.

The Agent for the Landlord stated that on January 31, 2017 the Application for Dispute Resolution, the Notice of Hearing and documents the Landlord submitted with the Application for Dispute Resolution were sent to the Tenant, via registered mail, at the service address noted on the Application. The Agent for the Landlord cited a tracking number that corroborates this statement.

In the absence of evidence to the contrary I find that these documents have been served in accordance with section 82 of the *Manufactured Home Park Tenancy Act* (Act); however the Tenant did not appear at the hearing. As the Tenant was served with proper notice of the hearing, the hearing proceeded in the absence of the Tenant.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began prior to the Landlord purchasing the property in July of 2016;
- the Landlord does not have a written tenancy agreement for the site;
- the current monthly rent is \$710.00;
- rent is due by the first day of each month;
- the rental unit is currently occupied by someone other than the Tenant;

- rent has not been paid for December of 2016, January of 2017, or February of 2017;
- a Ten Day Notice to End Tenancy for Unpaid Rent, which has an effective date of December 19, 2016, was mailed to the Tenant by registered mail on December 12, 2016; and
- the Canada Post website shows that the package mailed on December 12, 2016 was “refused” by the recipient.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$710.00 by the first day of each month and that the Tenant has not paid rent for December of 2016.

Section 39(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy that is the subject of these proceedings was served, pursuant to section 46 of the *Act*, by mail on December 12, 2016.

Section 83 of the *Act* stipulates that a document that is served by mail on the fifth day after it is mailed. I therefore find that the Tenant is deemed to have received the Notice to End Tenancy on December 17, 2016. I find that this document is deemed received even though there is evidence that the package was “refused”, as a party cannot avoid service by refusing registered mail.

Section 39(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on December 17, 2016 I find that the earliest effective date of the Notice was December 27, 2016.

Section 46 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was December 27, 2016.

Section 39 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 39(5) of the *Act*, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended. On this basis I grant the landlord an Order of Possession.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant.

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 27, 2017

Residential Tenancy Branch