



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WV Income Properties Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

An agent for the landlord attended the hearing and gave affirmed testimony. However, the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants joined the call. The landlord's agent testified that each of the tenants was individually served with the Landlord's Application for Dispute Resolution and notice of hearing by registered mail on January 31, 2017 and has provided a copy of a Canada Post cash register receipt bearing that date as well as 2 Registered Domestic Customer Receipts addressed to each of the tenants and stamped with that date by Canada Post. I am satisfied that both tenants have been served in accordance with the *Manufactured Home Park Tenancy Act*.

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 tenants for unpaid rent?

Background and Evidence

The landlord's agent testified that this tenancy, being rental of a manufactured home site within a manufactured home park, began on September 25, 2013 by way of an Assignment, and the tenants still reside in a manufactured home owned by the tenants situated on the site. Rent in the amount of \$718.00 per month was payable on the 1st day of each month, which was increased to \$744.42 per month effective November 1,

2016. A copy of the Notice of Rent Increase has been provided, however it is not signed by a landlord. No security deposit or pet damage deposit was collected by the landlord.

The landlord's agent further testified that the tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by the landlord's accountant on December 12, 2016 by posting a copy to the door of the tenant's manufactured home and a copy has been provided. It is dated December 12, 2016 and contains an effective date of vacancy of December 23, 2016 for unpaid rent in the amount of \$3,403.84 that was due on December 1, 2016. The landlord's agent has a note which has not been provided for this hearing signed by the accountant stating that the notice to end the tenancy was served on that date and in that manner, and was given the opportunity to provide a copy to me after the hearing had concluded.

The landlord further testified that the tenants have not paid any rent since the notice was issued and have not served the landlord with an application for dispute resolution disputing the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The tenants are now in arrears of rent the sum of \$4,892.68, and the landlord's agent testified that the last time the tenants' account with the landlord was at a zero balance was in April, 2016. The tenants paid \$743.00 in May, leaving a credit balance of \$25.00. June's rent was not paid, bringing the balance due to the landlord to \$693.00. No rent was paid in July and the balance due increased to \$1,411.00. August's rent came due on the 1st of the month, and the tenants paid \$1,650.00 on August 3, 2016, bringing the balance to \$479.00, and the tenants have not paid any rent since.

The landlord has also provided a Statement of the tenants' account with the landlord showing that effective November 7, 2016, the balance of rent owed to the landlord was \$2,659.42.

The landlord seeks an Order of Possession and a monetary order in the amount of \$4,892.68 for unpaid rent to end of February, 2017 and recovery of the \$100.00 filing fee.

Analysis

The *Manufactured Home Park Tenancy Act* states that once served with 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenants have 5 days to pay the rent in full or dispute the notice. If the tenants do neither, the tenants are conclusively presumed to have accepted the end of the tenancy.

I have received the note of the accountant in the form of a photograph, which I permitted the landlord's agent to provide to me after the hearing concluded. I am satisfied that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served by posting it to the door of the tenant's manufactured home on December 12, 2016 which is deemed to have been served 3 days later, or December 15, 2016. I accept the undisputed testimony of the landlord's agent that no rent has been paid since and the landlord has not been served with an application for dispute resolution by the tenants disputing the notice, and I have no such application before me. I find that the notice is in the approved form and contains information required by the *Act*. Therefore, I find that the tenants are 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 tenants.

With respect to the landlord's application for a monetary order, I have reviewed the Statement and have compared it to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, and the Notice of Rent Increase, and the affirmed testimony of the landlord's agent. The evidence shows that:

DATE	DESCRIPTION	AMOUNT DUE	AMOUNT PAID	AMOUNT OWING
April 30/16	Bal forward			0
May 2016	Rent due/paid	718.00	743.00	(25.00)
June 2016	Rent due	718.00	0	693.00
July 2016	Rent due	718.00	0	1,411.00
August 2016	Rent due/paid	718.00	\$1,650.00	479.00
September 2016	Rent due	718.00		1,197.00
October 2016	Rent due	718.00		1,915.00
November 2016	Rent due	744.42		2,659.42
December 2016	Rent due	744.42		3,403.84
January 2017	Rent due	744.42		4,148.26

February 2017	Rent due	744.42		4,892.68
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I accept the undisputed testimony of the landlord's agent, and I find that the amounts set out in the documentation before me is consistent with the testimony, and the landlord has established a monetary claim for unpaid rent in the amount of \$4,892.68.

Although a late fee of \$25.00 appears on the Statement, the landlord has not claimed it and absent a copy of the tenancy agreement, I am not satisfied that any late fee has been imposed in accordance with the regulations.

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 tenants.

I further grant a monetary order in favour of the landlord as against the tenants pursuant to Section 60 of the *Manufactured Home Park Tenancy Act* in the amount of \$4,992.68.

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: March 02, 2017

Residential Tenancy Branch