



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Sunshine Motel & Trailer Park Inc.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPC, MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord seeking an Order of Possession for cause, a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant 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 tenant joined the call. The landlord's agent testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing by registered mail on February 24, 2017 and has provided a copy of a Canada Post cash register receipt bearing that date as well as a registered domestic customer receipt addressed to the tenant. I am satisfied that the tenant has been served in accordance with the *Manufactured Home Park Tenancy Act*.

Issue(s) to be Decided

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

Background and Evidence

The landlord's agent testified that this month-to-month tenancy, being a site within a manufactured home park began on November 1, 2012 and the tenant still resides in the manufactured home on the site. Rent in the amount of \$305.00 per month is payable on the 1st day of each month. A copy of the tenancy agreement has been provided.

The landlord's agent further testified that the tenant is in arrears of rent the sum of \$415.00. The tenant had paid rent to the end of December, 2016 but didn't pay rent when it was due for January or February, 2017. The tenant paid \$500.00 towards the arrears of rent on February 24, 2017 but has not paid any rent for March, 2017 leaving a balance of \$415.00 owing. The park rules provide for late fees, for which the landlord claims \$90.00, or \$30.00 for each of those months. The landlord also claims loss of rental revenue for April, 2017 in the amount of \$305.00 and recovery of the \$100.00 filing fee.

The landlord caused the tenant to be served with a 1 Month Notice to End Tenancy for Cause on January 24, 2017 by placing it in the mailbox at the tenant's manufactured home. A copy has been provided and it is dated January 24, 2017 and contains an effective date of vacancy of January 24, 2017. The reason for issuing the notice states: "Tenant is repeatedly late paying rent."

Analysis

The *Manufactured Home Park Tenancy Act* states that a tenant who is served with a 1 Month Notice to End Tenancy for Cause has 10 days from the date of service, or deemed service, to dispute it by filing an application for dispute resolution. If the tenant fails to do so, the tenant is conclusively presumed to have accepted the end of the tenancy. In this case, the landlord's agent testified that the tenant has not served the landlord with an application for dispute resolution and I have no such application before me. I have reviewed the 1 Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*, other than the effective date of vacancy. The *Act* states that incorrect effective dates contained in such a notice are changed to the nearest date that complies with the *Act*. I accept the undisputed testimony of the landlord's agent that the tenant was served on January 24, 2017 by placing the notice in the mailbox at the tenant's manufactured home, which is deemed to have been served 3 days later, or January 27, 2017. Therefore, I find that the effective date of vacancy is changed to February 28, 2017. I also find that the tenant is conclusively presumed to have accepted the end of the tenancy. Since the effective date of vacancy has passed, I find that the landlord is entitled to an Order of Possession on 2 days notice to the tenant.

I also accept the undisputed testimony of the landlord's agent that the tenant is in arrears the sum of \$415.00 for rental arrears that have accumulated from January to March, 2017.

With respect to the landlord's claim for late fees, the *Act* requires that such fees be noted in the tenancy agreement. I have reviewed the tenancy agreement, and there is no such provision, and therefore, the landlord's application for late fees cannot succeed.

With respect to the landlord's claim for loss of rental revenue, I am not satisfied that the landlord won't be able to collect for April or that the landlord would be able to re-rent or what vacancies currently exist. Therefore, I am not satisfied that the landlord has established that claim. In the event that the landlord actually loses rental revenue as a result of the tenant's failure to comply with the *Act* or the tenancy agreement, the landlord will have leave to reapply for further monetary compensation.

In summary, I find that the landlord has established a monetary claim in the amount of \$415.00 for unpaid rent, an Order of Possession, and 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 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 \$515.00.

The landlord's application for a monetary order for loss of rental revenue 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: March 22, 2017

Residential Tenancy Branch