



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIRAE INVESTMENTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was conducted by conference call in response to the Landlord's Application for Dispute Resolution (the "Application") filed on February 23, 2017 requesting an Order of Possession and a Monetary Order for unpaid rent, and to recover the filing fee from the Tenant.

An agent for the company Landlord (the "Landlord") appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. However, there was no appearance by the Tenant during the 12 minute hearing or any submission of evidence prior to the hearing.

The Landlord testified that she served the Application and the Hearing Package to the Tenant by registered mail on March 8, 2017 to the rental unit address. The Landlord provided the Canada Post tracking number into evidence to verify this method of service.

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 Tenant was deemed served on March 13, 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 increase the monetary claim for March and April 2017 unpaid rent. As the Tenant would have been aware that the rent for these months was unpaid, I granted the Landlord's request 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 to allow the claim for the additional two months.

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 on March 27, 2015 on a month to month basis. The Tenant was required to pay rent in the amount of \$339.00 on the first day of each month which then increased to \$353.16 starting February 2017.

The Landlord testified the Tenant failed to pay rent from August 2016 onwards. As a result, the Landlord mailed a 10 Day Notice for Unpaid Rent or Utilities (the “10 Day Notice”) to the rental unit on January 18, 2017.

The 10 Day Notice was provided into evidence and shows a vacancy date of February 2, 2017 due to \$2,034.10 in unpaid rent that was due on January 1, 2017. The Landlord testified that in addition, the Tenant has failed to pay rent for February, March and April 2017 in the amount of \$353.16 per month. Therefore, the Landlord now seeks an Order of Possession to end the tenancy and a Monetary Order for the amount of \$3,093.58 (\$2,034.10 + (\$353.16 x 3)).

Analysis

I have carefully considered the undisputed affirmed testimony and the documentary evidence before me in this Decision as follows.

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 it; 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 mailed to the Tenant on January 18, 2017. Pursuant to Section 83 of the Act, the 10 Day Notice is deemed to have been received by the Tenant on January 23, 2017. Therefore, the Tenant would have had

until January 28, 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 Tenant did either.

As a result, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the vacancy date of the 10 Day Notice. As the vacancy date has now passed and the Tenant is 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 Tenant and may then be filed and enforced in the Supreme Court of British Columbia as an order of that court if the Tenant fails 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 Tenant is in rental arrears of \$3,093.58.

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 Tenant to the Landlord is \$3,193.58.

The Landlord is issued with a Monetary Order for this amount which must be served on the Tenant. 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 Tenant fails to make payment.

Copies of both orders for service and enforcement are attached to the Landlord's copy of this Decision. The Tenant may also be held liable for any costs associated with the enforcement of the orders by the Landlord.

Conclusion

The Tenant has 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 \$3,193.58 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: April 03, 2017

Residential Tenancy Branch