



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 48(4) of the *Manufactured Home Park Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlords for an Order of Possession based on unpaid rent and a Monetary Order.

The landlords submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on May 19, 2017, the landlords personally served the tenant the Notice of Direct Request Proceeding. The landlords had a witness sign the Proof of Service of the Notice of Direct Request Proceeding to confirm personal service. Based on the written submission of the landlords and in accordance with section 82, I find that the tenant has been duly served with the Direct Request Proceeding documents on May 19, 2017, the day it was personally served to them.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent pursuant to sections 39 and 48 of the *Act*?

Are the landlords entitled to monetary compensation for unpaid rent pursuant to section 60 of the *Act*?

Background and Evidence

The landlords submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a Notice of Rent Increase form, showing the rent being increased from \$489.00 to the current monthly rent amount of \$507.00;

- A copy of a manufactured home park tenancy agreement which was signed by the landlord and the tenant on October 23, 2015, indicating a monthly rent of \$489.00, due on the first day of the month for a tenancy commencing on November 1, 2015;
- A Monetary Order Worksheet showing the rent owing and paid during the relevant portion of this tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated April 4, 2017, with a stated effective vacancy date of April 14, 2017, for \$507.00 in unpaid rent; and
- A copy of a second 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 2, 2017, and personally handed to the tenant on May 2, 2017, with a stated effective vacancy date of May 2, 2017, for \$507.00 in unpaid rent.

Witnessed documentary evidence filed by the landlords indicates that the 10 Day Notice of May 2, 2017 was personally handed to the tenant at 3:00 pm on May 2, 2017. The 10 Day Notice states that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

Analysis

In this type of matter, the landlord must prove that they served the tenants with the 10 Day Notice in a manner that is considered necessary as per Sections 64(2) (a) and 81 of the *Act*. Residential Tenancy Policy Guideline # 39 contains the details about the key elements that need to be considered when making an application for Direct Request.

PROOF OF SERVICE

10-Day Notice to End Tenancy

The landlord must prove the tenant was served with the 10-Day Notice to End Tenancy.

A landlord must serve the tenant with a 10-Day Notice to End Tenancy by:

registered mail;
in person, with a witness verifying it was served; or
by posting it on the tenant's door or in an equally conspicuous place, with a witness verifying it was served.

Proof of service of the 10 Day Notice to End Tenancy may take the form of:

registered mail receipt and printed tracking report;
a receipt signed by the tenant, stating they took hand delivery of the document(s); or
a witness statement that they saw the landlord deliver the document(s).

I find that the landlord has not provided documentary evidence to confirm service of the 10 Day Notice of April 4, 2017.

However, I have reviewed all documentary evidence and in accordance with section 81 of the *Act*, I find that the tenant was duly served with the second 10 Day Notice on May 2, 2017.

I find that the tenant was obligated to pay the monthly rent in the amount of \$507.00, as per the tenancy agreement and the Notice of Rent Increase.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 5 days granted under section 39(4) of the *Act* and did not dispute the 10 Day Notice within that 5 day period.

Based on the foregoing, I find that the tenant is conclusively presumed under section 39(5) of the *Act* to have accepted that the tenancy ended on the effective date of the second 10 Day Notice, May 12, 2017.

In a Direct Request proceeding, a landlord cannot pursue rent owed for an amount beyond the amount noted on the 10 Day Notice that was issued to the tenant. As I am not able to confirm service of the 10 Day Notice of April 4, 2017, I cannot hear the portion of the landlords' application for a monetary claim arising from rent owed for April 2017. For this reason, I dismiss the portion of the landlords' monetary claim for unpaid rent owing from April 2017, with leave to reapply.

Therefore, I find that the landlords are entitled to an Order of Possession and a Monetary Order in the amount of \$507.00, the amount claimed by the landlords, for unpaid rent owing for May 2017 as of May 15, 2017.

Conclusion

I grant an Order of Possession to the landlords effective **two days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 60 of the *Act*, I find that the landlords are entitled to a Monetary Order in the amount of \$507.00 for rent owed for May 2017. The landlords are provided with this Order in the above terms and the tenant must be served with **this Order** as soon as possible. Should the tenant fail to comply with this Order, this Order may be

filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

The portion of the landlords' monetary claim for unpaid rent owing from April 2017 is dismissed with leave to reapply.

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: May 23, 2017

Residential Tenancy Branch