



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This is a reconvened hearing dealing with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 48;
- a monetary order for unpaid rent pursuant to section 60;
- authorization to recover its filing fee for this application from the tenant pursuant to section 65.

The landlord's agent (the landlord) attended the hearing via conference call and provided affirmed testimony. The tenant did not attend or submit any documentary evidence. The landlord provided undisputed affirmed evidence that the tenant was served with the notice of a reconvened hearing package and interim decision via Canada Post Registered Mail on May 26, 2017. The landlord stated that the tenant was also served with the first submitted documentary evidence via Canada Post Registered Mail on May 23, 2017 and the second submitted documentary evidence package in person on June 19, 2017. The landlord provided undisputed affirmed testimony that the Canada Post Registered Mail Packages were "unclaimed" by the tenant. I accept the undisputed affirmed evidence of the landlord and find that although the tenant did not claim the Canada Post Registered Mail Packages that the tenant was sufficiently served as per section 90 of the Act.

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 and recovery of the filing fee?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The landlord clarified that this was a manufactured home park tenancy act matter as the mobile home is not owned by the landlord and that the tenant only rent's the pad.

This tenancy began on October 20, 2016 where the monthly rent is \$292.00 payable on the 1st day of each month as per the submitted copy of the "lease agreement". The landlord clarified that this agreement was carried over from another contract dated October 7, 2013 which was made with the tenant's partner, W.M. The landlord has provided copies of both agreements. The landlord clarified that the previous agreement dated October 7, 2013 was a "Rent Option to Purchase Agreement" which became null and void on September 30, 2014 as it was never completed.

The landlord seeks an order of possession and a monetary order for unpaid rent of \$843.00 which consists of:

\$159.00	Unpaid Rent, April 2017
\$342.00	Unpaid Rent, May 2017
\$342.00	Unpaid Rent, June 2017

The landlord clarified that the rental arrears include a \$50.00 late payment charge as provided in condition #1 of the Rules and Regulations.

The landlord provided undisputed affirmed evidence that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 2, 2017 via Canada Post Registered Mail on May 2, 2017. The landlord has provided a copy of a completed proof of service document and a copy of the Canada Post Customer Receipt tracking number as confirmation. The 10 Day Notice sets out that the tenant failed to pay rent of \$976.00 that was due on May 1, 2017, an effective end of tenancy date of May 12, 2017 and that 10 Day Notice was signed and dated on May 2, 2017.

The landlord also clarified that after the 10 Day Notice was served that the tenant has made partial rent payments for which the landlord has issued receipts "for use and occupancy only" notifying the tenant that the landlord was still seeking an end to the tenancy.

Analysis

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

I accept the undisputed affirmed evidence of the landlord that the tenant was served with the 10 Day Notice dated May 2, 2017 via Canada Post Registered Mail on May 2, 2017.

The tenant failed to pay the outstanding rent within five days of receiving the 10 Day Notice. The tenant has not made application pursuant to subsection 46(4) of the Act within five days of receiving the 10 Day Notice. In accordance with subsection 46(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by May 12, 2017. As that has not occurred, I find that the landlord is entitled to a two-day order of possession. The landlord will be given a formal order of possession which must be served on the tenant(s). If the tenant does not vacate the rental unit within the two days required, the landlord may enforce this order in the Supreme Court of British Columbia.

As for the landlord's monetary claim, I accept the landlord's undisputed affirmed evidence that the tenant failed to pay the rent owed as claimed by the landlord. I find based upon the undisputed affirmed evidence of the landlord that the landlord has established a claim for \$843.00.

However, Section 5 of the Manufactured Home Park Tenancy Regulations speak to late rent fees and states in part,

5 (1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

As such, I find that the landlord's inclusion of a \$50.00 late fee to be contrary to the Act and Regulations. The landlord's claims for a \$50.00 per month late rent fee totalling, \$150.00 shall be excluded from the landlord's claim.

The landlord is entitled to a monetary claim of \$693.00.

The landlord having been successful is entitled to recovery of the \$100.00 filing fee.

Conclusion

The landlord is granted an order of possession.

The landlord is granted a monetary order for \$693.00.

These orders must be served upon the tenant. Should the tenant fail to comply with the orders, the orders may be filed in the Supreme Court of British Columbia and the Small Claims Division of the Provincial Court and enforced as an order of those courts.

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: July 12, 2017

Residential Tenancy Branch