



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Spring Island Mobile Home Park
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession and a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of the application.

The named landlord attended the hearing, gave affirmed testimony, and represented the landlord company. 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 testified that the tenant was served with the Landlord's Application for Dispute Resolution and notice of this hearing on May 29, 2017 by personally handing it to the tenant. I accept that testimony, and I find that the tenant has been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Have the landlords established that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was issued in accordance with the *Residential Tenancy Act*?
- Have the landlords established a monetary claim as against the tenant for unpaid rent or utilities?
- Should the landlords be permitted to keep all or part of the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began about 18 months ago and the tenant still resides in the rental unit. Rent in the amount of \$950.00 per month, plus \$25.00 per month for utilities is payable on the 1st day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$475.00 which is still held

in trust by the landlords, and no pet damage deposit was collected. The rental unit is a manufactured home owned by the landlord. A written tenancy agreement was signed by the parties, but is not available for this hearing.

The landlord further testified that the tenant is in arrears of rent \$175.00 for June, 2017 as well as \$950.00 for July's rent and \$25.00 for utilities, and is still in arrears for utilities from last year in the amount of \$275.00.

On May 15, 2017 the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by posting it to the door of the rental unit. A copy has been provided for this hearing and it is dated May 15, 2017 and contains an effective date of May 25, 2017 for unpaid rent in the amount of \$975.00 that was due on May 1, 2017. The tenant paid \$1,000.00 on May 29, 2017, being \$950.00 for May's rent as well as \$25.00 for May's utilities and \$25.00 toward last year's arrears of utilities. Only the first page of the 2-page notice has been provided for this hearing, and the landlord testified that the tenant was served with both pages, and the landlord provided both pages to the BC Access Centre. A clerk or information officer told the landlord that both pages had to be provided as evidence, and the landlord had to go home to get the second page and re-submitted all of it.

The landlords seek an Order of Possession, a monetary order for unpaid rent and utilities totalling \$1,425.00, recovery of the \$100.00 filing fee and to keep the \$475.00 security deposit in partial satisfaction.

Analysis

I accept the testimony of the landlord that both pages of the 2-page 10 Day Notice to End Tenancy for Unpaid Rent or Utilities were served on the tenant, and provided as evidence to this hearing, considering that I have the landlords' evidentiary material twice.

The *Residential Tenancy Act* states that once served with such a notice, the tenant has 5 days to dispute it or pay the rent in full. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy. I accept the undisputed testimony of the landlord that the tenant was served with the notice by posting it to the door of the rental unit on May 15, 2017, which is deemed to have been served 3 days later, or May 18, 2017. The tenant did not pay the rent within 5 days and has not served the landlords with an application for dispute resolution disputing the notice. I have reviewed the notice, and I find that it is in the approved form and contains information required by the *Act*. Therefore, I find that the tenant is conclusively presumed to have accepted the end of the tenancy and the landlords are entitled to an Order of Possession.

The *Act* also specifies that incorrect effective dates contained in a notice to end a tenancy given by a landlord are changed to the nearest date that complies with the *Act*. Having found that the tenant was deemed to have been served with the notice on May 18, 2017, the effective date of

vacancy is changed to May 28, 2017. Since that date has passed, I grant the Order of Possession on 2 days notice to the tenant.

With respect to the monetary claim, I accept the undisputed testimony of the landlord that the tenant is in arrears of utilities \$275.00 from last year, \$25.00 for current utilities, \$175.00 for June, 2017 rent, \$975.00 for July, 2017 rent and utilities, for a total of \$1,425.00.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee.

I order the landlords to keep the \$475.00 security deposit in partial satisfaction, and I grant a monetary order in favour of the landlords for the difference in the amount of \$1,040.00.

Conclusion

For the reasons set out above, I hereby grant an Order of Possession in favour of the landlords on 2 days notice to the tenant.

I further order the landlords to keep the \$475.00 security deposit and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,040.00.

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 *Residential Tenancy Act*.

Dated: July 13, 2017

Residential Tenancy Branch