



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TIMBERLANDS PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

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

- an Order of Possession for unpaid pad rental pursuant to section 48;
- a monetary order for unpaid rent pursuant to section 60; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 65.

The landlord attended the hearing from the outset of this hearing at the scheduled time, waiting over ten minutes before any sworn testimony was taken from her. Although the Respondent did not join the hearing until almost twenty minutes after the scheduled commencement time, he did join this hearing and I ensured that we reviewed information regarding the service of documents that occurred before he connected with this teleconference hearing. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

I clarified the spelling of the Respondent's last name, which was revised to reflect the correct spelling noted above.

The landlord testified that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted on the door of this manufactured home on June 8, 2017 by the park manager. The 10 Day Notice identified the Respondent's mother HD, as the tenant. While the only written tenancy agreement for this manufactured home park pad rental was with the Respondent's mother and father, the Respondent has been the occupant of the manufactured home on these premises since August 25, 2015. In accordance with sections 88 and 90 of the *Act*, I am satisfied that the owner of this manufactured home was deemed served with the landlord's 10 Day Notice on June 11, 2017, the third day after its posting on the door of the manufactured home.

The Respondent testified that he had been ill and was staying elsewhere until the day before this hearing. He testified that his mother is hospitalized in Hamilton, Ontario, and that he has a limited power of attorney over her manufactured home related affairs. He testified that as he had not been at the manufactured home until the day before this hearing, he was unaware until the previous day that a 10 Day Notice had been issued regarding this pad rental.

The landlord testified that she sent the Respondent a copy of the dispute resolution hearing and written evidence packages by registered mail on August 4, 2017. She provided a Canada Post Tracking Number to confirm this registered mailing, noting that these documents were successfully delivered on August 9, 2017. The Respondent confirmed that his brother had signed for receipt of these documents and handed them to him, upon his return from his illness the day before this hearing. I am satisfied that the Respondent was duly served with these documents in accordance with sections 88 and 89 of the *Act*.

During the course of the hearing, it also became apparent that another arbitration hearing is scheduled for September 11, 2017, in which the Respondent AS has apparently identified the landlord's representative at this hearing as a respondent in his own application. The landlord claimed that this was actually a dispute between two tenants in the manufactured home park. She said that she did not believe that she was correctly identified as a respondent in that application to be heard on September 11, 2017. I noted that none of these other issues were properly before me, and I could not consider anything related to the Respondent's application.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid pad rent? Is the landlord entitled to a monetary award for unpaid pad rent? Is the landlord entitled to recover the filing fee for this application from the Respondent?

Background and Evidence

This manufactured home park pad rental originally commenced on January 1, 1996. The tenants listed in the Manufactured Home Park Tenancy Agreement submitted into written evidence by the landlord were the Respondent's parents. Monthly pad rent at that time was \$220.00, which has increased to \$403.00 per month at present, payable on the first of each month.

On August 21, 2015, the Respondent's mother, Tenant HD, sent the landlord a letter advising that she was putting her manufactured home up for sale as of August 25, 2015, and that her son, the Respondent, would be residing in the home until the home was

sold. The Respondent confirmed this information, although he still considers his mother to be the rightful tenant responsible for this pad rental and tenancy.

The landlord's 10 Day Notice of June 8, 2017 identified \$428.00 in pad rental owing as of June 1, 2017, which apparently incorrectly included a \$25.00 late fee to the regular \$403.00 that was due on that date.

The landlord has been inconsistent to the extent that the 10 Day Notice identified Tenant HD as the tenant and the application for dispute resolution identified her son, Respondent AS, as the tenant. Whether or not he has a formal tenancy agreement with the landlord, I am satisfied that the Respondent has been the effective occupant of the manufactured home since August 25, 2015, and may even reside there on the basis of an oral tenancy agreement. While he has not signed a new tenancy agreement with the landlord, he acts for his mother in this matter and was certainly aware that pad rent remained owing. He maintained that pad rent was paid for June 2017, although he was not sure when, but confirmed that pad rent was not paid for either July or August 2017. The landlord did not dispute the Respondent's claim that pad rental was paid for June, but was still owing for July and August.

Analysis

Pursuant to section 56 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to a final and binding resolution of the issues currently before me and arising from the landlord's application under the following terms:

1. The Respondent agreed to make a payment of \$806.00 to the landlord's property manager on the afternoon of August 30, 2017.
2. The landlord agreed that the Respondent's payment of \$806.00 would constitute a full recovery of all funds currently owed for this manufactured home park pad rental, including any late fees.
3. The landlord agreed to withdraw the 10 Day Notice of June 8, 2017.
4. The parties agreed that the payment of the pad rental for September 2017 would not become due until September 14, 2017, by which time the Respondent agreed to pay \$428.00, comprised of \$403.00 for pad rental and a \$25.00 late fee for September 2017.

5. Both parties agreed that the terms of the settlement agreement as outlined above were entered into free of any coercion and that all issues arising out of the landlord's current application are subject to this final and binding resolution of this dispute.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$806.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the Respondent does not abide by the terms of the above settlement. The landlord is provided with these Orders in the above terms and the Respondent must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the Respondent fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

The landlord's 10 Day Notice is withdrawn and this tenancy continues until ended in accordance with the *Act*.

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: August 30, 2017

Residential Tenancy Branch