



Dispute Resolution Services

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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 landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on September 15, 2017, the landlord personally served the tenant the Notice of Direct Request Proceeding. The landlord had the tenant and 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 landlord and in accordance with section 82, I find that the tenant has been duly served with the Direct Request Proceeding documents on September 15, 2017, the day it was personally served to the tenant.

Issue(s) to be Decided

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

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 60 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of a manufactured home park tenancy agreement which was signed by the landlord and the tenant on October 31, 2011, indicating a monthly rent of \$511.00, due on the first day of the month for a tenancy commencing on November 01, 2011;

- Five copies of Notice of Rent Increase forms, showing the rent being increased from \$511.00 to the current monthly rent amount of \$614.00;
- A Monetary Order Worksheet with an attached ledger showing the rent owing and paid during the relevant portion of this tenancy; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 08, 2017, with a stated effective vacancy date of August 18, 2017, for \$3,245.00 in unpaid rent.

Witnessed documentary evidence filed by the landlord indicates that the 10 Day Notice was personally handed to the tenant at 2:00 p.m. on August 08, 2017. The landlord had the tenant and a witness sign the Proof of Service Notice to End Tenancy to confirm personal service. 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

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 10 Day Notice on August 08, 2017, the day it was personally served to the tenant.

As the Direct Request process is an ex parte proceeding that does not allow for any clarification of the facts, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. The onus is on the landlord to present evidentiary material that does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding.

I find that there may be deficiencies with respect to the following Notice of Rent Increase forms:

- The Notice of Rent increase form dated July 19, 2012 bases the increase of rent on the amount of \$513.00 when, in fact, the tenancy agreement sets out the amount of rent as \$511.00; and
- The Notice of Rent Increase form with respect to a rent increase to take effect on November 01, 2013 is either undated or the copy provided is too light to read.

However, I find that the possible deficiencies in the rent increase forms have no overall effect on the landlord's claim that rent, even at the level identified in the original tenancy agreement, remains outstanding. I accept the evidence before me that although the tenant made a payment on August 11, 2017 in the amount of \$1,228.00, there is still rent outstanding taking into consideration the possible deficiencies in the Notice of Rent Increase forms and the late charges. I further find the tenant did not dispute the 10 Day Notice within that 5 day period pursuant to section 39(4) of the Act.

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 10 Day Notice, August 18, 2017.

Accordingly, I find that the landlord is entitled to an Order of Possession.

In addition to the possible deficiencies in the Notice of Rent Increase forms mentioned previously, I note that the landlord has also sought a monetary award for late fees, which is not permitted through the direct request process. Accordingly, for these reasons, the monetary portion of the landlord's application is dismissed with leave to reapply.

Conclusion

I grant an Order of Possession to the landlord 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.

I dismiss the landlord's application for a Monetary Order, 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: September 22, 2017

Residential Tenancy Branch