



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) filed by the Landlord under the *Manufactured Home Park Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and Utilities and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenant did not attend. The Landlord was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Landlord testified in the hearing that the original Application submitted to the Residential Tenancy Branch (the “Branch”) on September 11, 2017, the corrected Application submitted to the Branch on September 14, 2017, the Notice Hearing, and the evidence package were sent to the Tenant by registered mail on September 15, 2017. As a result, I find that the Tenant was deemed served with these documents on September 18, 2017, three days after they were sent by registered mail.

I have reviewed all evidence and testimony before me that met the requirements of the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

Preliminary matters

At the outset of the hearing I advised the Landlord that the reason they selected on the Application for seeking an Order of Possession did not match the Notice to End Tenancy in the documentary evidence before me. The Landlord stated that they made an error on the Application when they requested an Order of Possession for unpaid rent as they are seeking a Monetary Order for back-owed rent and utilities, in addition to the enforcement of the One Month Notice. As a result, the Landlord requested that their Application be amended to change the reason they are seeking an Order of Possession from unpaid rent or utilities to cause. The Landlord also requested to amend the application to include loss of rent for October, 2017.

The Rules of Procedure state under section 4.2, that the Application may be amended at the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. As a result, I have amended the Application to include outstanding rent for October, 2017. As a copy of the One Month Notice was served on the respondent along with the Application, and the Application included a request for an Order of Possession, I also find that the respondent knew, or ought to have known, that the Application related to the One Month Notice and therefore I find it reasonable to amend the reason the Landlord is seeking an Order of Possession.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for cause pursuant to sections 40 and 48 of the *Act*?

Is the Landlord entitled to a Monetary Order for unpaid rent and utilities and the recovery of the filing fee pursuant to sections 60 and 65 of the *Act*?

Background and Evidence

The Landlord stated that the tenancy began over 10 years ago and that rent in the amount of \$290.00 is currently due on the first day of each month. The Landlord testified that the Tenant has not paid rent on time in over a year, and that in fact, has not made any payments towards rent since August, 2016. As a result, the Landlord testified that a One Month Notice was served to the Tenant by registered mail which was sent on March 7, 2017. In support of their testimony, the Landlord also submitted a signed Proof of Service Notice to End Tenancy and a print-out from the Canada Post website showing that the registered mail was received by the Tenant on March 9, 2017.

The One Month Notice in the documentary evidence before me, dated March 7, 2017, has an effective vacancy date of April 30, 2017, and states that the reason for ending the tenancy is because the Tenant is repeatedly late paying rent.

The Landlord also testified that they are seeking a Monetary Order as the Tenant currently owes \$4,980.00 in rent and \$1,692.35 in utilities. The Landlord stated that utilities are not included in rent, that each mobile home site has its own water meter, and that Tenants are responsible to pay their own water bills. The Landlord testified that the Tenant has not paid their water bill in many months, and that as a result, the outstanding balance of \$1,692.35 was transferred to the Landlord's property taxes by the city. The Landlord stated that they have served the Tenant with multiple letters regarding the outstanding rent and utilities but the Tenant has not responded or paid the amounts owing. As a result, the Landlord stated that they are seeking a Monetary Order.

Analysis

Section 40 of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant is repeatedly late paying the rent. It also states that a tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice and that if they do not make an application for dispute resolution within that period, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the manufactured home site by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenant was deemed served with the One Month Notice on March 9, 2017, the date Canada Post confirms the Tenant received it by registered mail.

As there is no evidence before me to the contrary, I find that the Tenant did not dispute the One Month Notice within the 10 day period provided for under the *Act*, and therefore the Tenant is conclusively presumed under section 40(5) of the *Act* to have accepted that the tenancy ended on the effective date of the One Month Notice, April 30, 2017. As a result, the Landlord is entitled to an Order of Possession.

Based on the Landlord's affirmed and undisputed oral testimony, and the documentary evidence before me, I also find that the Tenant owes \$4,980.00 in outstanding rent and \$1,692.35 in outstanding utilities. Pursuant to section 65 of the *Act*, I also find that the

Landlord is entitled to the recovery of the \$100.00 filing fee. As a result, the Landlord is entitled to a Monetary Order in the amount of \$6,772.35 pursuant to section 60 of the *Act*.

Conclusion

Pursuant to section 48 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 60 of the *Act*, I grant the Landlord a Monetary Order in the amount of **\$6,772.35**. The Landlord is 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.

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: October 30, 2017

Residential Tenancy Branch