



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR

Introduction

This participatory hearing was convened after the issuance of an October 06, 2017, interim decision by an Adjudicator. The Adjudicator determined that the landlord's application could not be considered by way of the Residential Tenancy Branch's (RTB) direct request proceedings, as had been originally requested by the landlord. Pursuant to section 51 of the *Manufactured Home Park Tenancy Act* (the *Act*), I was designated to hear this matter. The Adjudicator reconvened the landlord's application to a participatory hearing for the following:

- an Order of Possession for unpaid rent pursuant to sections 39 and 48; and
- a monetary order for unpaid rent pursuant to section 60.

The landlord's agent C.D. (the landlord) and an agent for the Tenant G.R., (the Tenant's Agent) attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that Tenant J.R. is recently deceased as of July 2017.

Preliminary Matters

At the outset of the hearing the Tenant's Agent requested an adjournment as Tenant G.R. was not present at the hearing due to medical issues. The landlord objected to the request for adjournment due to multiple months of unpaid rent.

Residential Tenancy Branch Rule of Procedure 7.9 states that, without restricting the authority of the arbitrator to consider other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- The oral or written submissions of the parties;
- The likelihood of the adjournment resulting in a resolution;

- The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment;
- Whether the adjournment is required to provide a fair opportunity for a party to be heard; and
- The possible prejudice to each party

I find that granting an adjournment would prejudice the landlord as it could potentially increase the amount of unpaid rent owed to the landlord. I find that no evidence was provided to establish the medical issues that prevented Tenant G.R. from attending the hearing. I further find that if Tenant G.R. had the capacity to have a representative attend the hearing on their behalf, they had the capacity to provide proof of their medical issues or that the monthly rent was paid. I find that an adjournment is not likely to result in a different resolution and for the above reasons Tenant G.R.'s request for an adjournment, through the Tenant's Agent, is dismissed.

The landlord testified that the notices of this adjourned hearing were personally served to Tenant G.R. with a witness on October 12, 2017. In accordance with section 82 of the *Act*, I find that Tenant G.R. is duly served with the notice of adjourned hearing.

The landlord testified that the Landlord's Application for Dispute Resolution (the Application) and evidentiary package was sent to the tenants by way of registered mail as a part of the direct request proceeding package on September 26, 2017. The landlord provided a copy of the Canada Post Tracking Numbers to confirm these registered mailings. In accordance with sections 81, 82 and 83 of the *Act*, I find that Tenant G.R. was deemed served with the Application and evidentiary package on October 01, 2017, the fifth day after its registered mailing.

The landlord entered into written evidence a signed and witnessed Proof of Service Document attesting to the fact that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was posted to the door of the manufactured home at 11:05 a.m. on September 06, 2017. In accordance with sections 81 and 83 of the *Act* I find that the 10 Day Notice, identifying \$516.73 in unpaid rent owing for this tenancy, was deemed served to the tenant on September 09, 2017.

The landlord sought to increase their monetary claim from \$516.73 to \$1,650.19 to reflect the filing fee for this application and the tenants' failure to pay \$516.73 in monthly rent for October 2017 and November 2017, the additional months of unpaid rent waiting for this hearing. Residential Tenancy Rule of Procedure 4.2 states that 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, the application may be amended at the hearing.

I allow the amendment for increased rent as this was clearly rent that Tenant G.R. would have known about and resulted since the landlord submitted their Application.

I dismiss the landlord's request to amend their Application to recover the filing fee as this amendment would prejudice Tenant G.R. due to the filing fee not being a part of the landlord's initial Application and Tenant G.R. would not have knowledge of the landlord's request for the filing fee.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary award for unpaid rent?

Background and Evidence

The landlord provided written evidence that this tenancy began on October 01, 2003, with a monthly rent of \$370.00 due on the first day of each month. The landlord submitted three Notice of Rent Increase forms showing the monthly rent was increased to \$516.73 effective as of April 01, 2017.

The landlord submitted into evidence a copy of an obituary showing that Tenant J.R. is deceased of July 13, 2017.

A copy of the signed 10 Day Notice, dated September 06, 2017, with an effective date of September 16, 2017, was also included in the landlord's evidence.

A tenant ledger showing the rent owing and paid during this tenancy was also included in the landlord's evidence.

The landlord's amended monetary claim is for the unpaid monthly rent in the amount \$516.73 for September 2017, October 2017 and November 2017 totalling \$1,550.73.

The landlord testified that Tenant J.R. passed away in July of 2017 and Tenant G.R. paid the monthly rent to the landlord for August 2017, but has not paid any amounts to the landlord since August 2017.

The Tenant's Agent provided no testimony on behalf of Tenant G.R.

Analysis

Section 82 allows for service of an application for dispute resolution by either handing it to the tenant or sending a copy by registered mail to the address at which the tenant resides. I find that Tenant J.R. is deceased and there is no documentation provided by the landlord as to who is representing Tenant J.R.'s estate and where they can be served.

For the above reason I find that Tenant J.R. cannot be named as a party to this dispute as he is deceased. In addition I find the estate of Tenant J.R. has not been served in accordance with section 82 of the *Act* and the portion of the landlord's application, naming Tenant J.R. as a respondent, is dismissed.

Section 20 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlord's undisputed testimony, I find Tenant G.R. failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 39(4) of the *Act* within the same timeframe. Due to the failure of the tenant to take either of these actions within five days, I find the tenant is conclusively presumed to have accepted the end of this tenancy by September 19, 2017, the corrected effective date on the 10 Day Notice pursuant sections 39(5) and 46(2) of the *Act*. In this case, Tenant G.R. and anyone on the premises were required to vacate the premises by September 19, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Section 60 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

Based on the landlord's written evidence and affirmed testimony, I find that the landlord is entitled to a monetary award of \$1,550.19, against Tenant G.R., for unpaid rent owing for this tenancy for September 2017, October 2017 and November 2017.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on Tenant G.R... Should Tenant G.R. or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 60 of the *Act*, I grant a Monetary Order in the landlord's favour against Tenant G.R. in the amount of \$1,550.19, for unpaid rent owing for September 2017, October 2017 and November 2017.

The landlord is provided with this Order in the above terms and Tenant G.R. must be served with this Order as soon as possible. Should Tenant G.R. fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 29, 2017

Residential Tenancy Branch