



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MIRAE INVESTMENT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

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 rent 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.

Both parties attended the hearing and 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.

The landlord's representatives (the landlord) testified that they posted a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the door of the manufactured home on October 3, 2017. The tenant said that no one was living in the manufactured home as of the third week in August. She maintained that the landlord had refused to allow her to assume the manufactured home park tenancy previously held by the former tenants who owned this manufactured home. Although she did not receive the 10 Day Notice immediately, she did confirm that she eventually received that Notice. Under these circumstances, as she had not provided the landlord with a mailing address with respect to her occupancy of this pad rental, and in accordance with sections 81 and 83 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice on October 6, 2017, the third day after it's posting.

The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package and written evidence package sent by the landlord by registered mail on November 17 and 24, 2017. I find that the tenant was duly served with these documents in accordance with sections 81 and 82 of the *Act*.

While the tenant did not provide the landlord with a copy of her written evidence until three days before this hearing, the landlord's representatives confirmed that they had received and reviewed these documents. In accordance with the Residential Tenancy Branch's Rules of Procedure, I find that despite this written evidence having been served to the landlord beyond the normal time frames expected for such service that no unfairness would result from my consideration of this evidence.

At the commencement of the hearing, I clarified that the landlord had already received a monetary Order in the amount of \$4,622.50 against the former co-tenants named as Respondents in a previous application initiated by the landlord regarding this manufactured home park site. I advised that I could neither set aside nor alter that decision issued by another arbitrator appointed under the *Act* on September 1, 2017. That decision is final and binding and the legal principle of *res judicata* prevents me from altering that decision in any way. I noted that much of the landlord's application for a monetary award involved a duplication of the successful claim for unpaid rent that led to the issuance of the monetary Order of \$4,622.50. The landlord noted in sworn testimony and in written evidence that a court appointed bailiff had refused to enforce the Order of Possession also issued on September 1, 2017, because the ownership of the manufactured home in question had been transferred to the current Respondent prior to that date.

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? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

Both parties agreed that the landlord refused to allow for a transfer of the existing tenancy agreement from the previous co-tenants to the current Respondent who purchased the manufactured home on July 24, 2017. The previous co-tenants were responsible for paying a monthly pad rental of \$362.50 on the first of each month. As they did not adhere to the monetary terms of their tenancy agreement with the landlord, the landlord took action by way of their application under the file number noted on the first page of this decision to end that tenancy and obtain a monetary award for unpaid rent owing from August 2016 until July 2017. At the August 30, 2017 hearing, the arbitrator added unpaid rent owing from August 2017 to the landlord's monetary claim.

In addition to her monetary Order, the presiding arbitrator also issued a two-day Order of Possession to the landlord on September 1, 2017.

As the landlord had not been notified that the previous co-tenants had sold the manufactured home to the Respondent in this application, the landlord refused to allow the Respondent to assume the previous tenancy agreement. Landlord PW maintained that they only became aware that the ownership of the manufactured home had transferred to the Respondent in early October 2017, after checking ownership records with the government registry for such homes. While there were discussions about the prospect of entering into a new tenancy agreement with the Respondent, emails from the landlord's representative confirm that the landlord was only willing to do so if the Respondent paid the rent owing from the previous tenancy.

The landlord considered the debt from the previous tenancy attached to the manufactured home which the Respondent had purchased. In support of his actions, Landlord PW referenced section 48(h) of the *Manufactured Home Part Tenancy Regulation* (the *Regulation*), which was read into sworn testimony by his colleague Landlord DM.

As the court appointed bailiff refused to enforce the two-day Order of Possession, the landlord commenced the process to obtain a new Order of Possession against the Respondent who now owns the manufactured home.

At the hearing, the tenant confirmed that she has not paid any rent to the landlord during the time when she has had ownership of the manufactured home. She entered written evidence confirmed by her sworn testimony that her daughter resided in the manufactured home from July 28, 2017 for two or three weeks, but that the home has been vacant since then. She said that she understood that she should be responsible for up to two months of unpaid rent, but asserted that the landlord's actions had prevented her from removing her manufactured home in a more timely fashion, and, in fact, led to an unnecessary charge that will be forthcoming from an out of town moving company.

The tenant provided written evidence that she has obtained the necessary authorizations from the government office responsible to enable her to move her manufactured home to another location in another manufactured home park. She maintained that when she attempted to secure the services of one of the two local companies that move manufactured homes in her community, the landlord applied pressure on them to refuse to undertake this task. The landlord denied this claim,

stating that they were naturally reluctant to do this work while the status of the existing Order of Possession remained unclear and the landlord's current application was scheduled to be heard. The tenant acknowledged that neither of the local companies she contacted told her that the landlord had spoken with them to dissuade them from moving her manufactured home.

The tenant also gave undisputed sworn testimony, supported by written evidence and photographic evidence that she was prevented from moving her manufactured home by a mover based in another community. She provided undisputed evidence that the landlord had parked a bobcat and another vehicle in close proximity to her manufactured home such that the out of town mover was unable to remove her manufactured home from the site.

Analysis

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

While I have given regard to Landlord PW's assertion that section 48(2) of the *Regulation* authorizes the landlord to take action against the Respondent, I find that he has misunderstood this provision of the *Regulation* and the corresponding section 28(2) of the *Act*. Section 48(b) of the *Regulation* reads in part as follows:

For the purposes of section 28 (2) of the Act [landlord's consent], the landlord of the park may withhold consent to assign or sublet only for one or more of the following reasons:...

(h) the home owner owes the landlord arrears of rent or an amount due under an order of the director;...

Section 28(2) of the *Act* reads as follows:

(2) A landlord may withhold consent to assign a tenancy agreement or sublet a tenant's interest in a manufactured home site only in the circumstances prescribed in the regulations.

These provisions enabled the landlord to withhold his consent to assign the previous co-tenants' tenancy agreement to the current Respondent. However, consent to assign the tenancy agreement or to enter into a new tenancy agreement with the Respondent is no longer at issue, and has not been for some time. The Respondent has clearly made plans to relocate her manufactured home to another manufactured home park. The

landlord cannot prevent the tenant from removing her manufactured home to another manufactured home park, as a way of attempting to collect outstanding rent owed by the previous co-tenants and subject to a final and binding monetary Order issued against them in the landlord's favour. The previous co-tenants no longer own the manufactured home and the Respondent has been trying earnestly to comply with the landlord's 10 Day Notice issued while she owned the manufactured home and while it remained on the landlord's manufactured home site.

The \$5,247.50 amount of unpaid rent identified as owing on the landlord's 10 Day Notice includes \$4,622.50 in unpaid rent for which the landlord has already received a monetary Order from the previous tenants. While the landlord has attempted to include this amount from the current owner of the manufactured home, I find that the landlord is mistaken in believing that the unpaid rent attaches to the home itself rather than the parties who owed that unpaid rent. Although the amount identified as owed by the Respondent on the 10 Day Notice is a gross overestimation of the amount owed by the Respondent to the landlord, at least a small portion of that amount (i.e., two months at $\$362.50 = \650.00) was correctly included in the 10 Day Notice posted on October 3, 2017. In the absence of any signed tenancy agreement between the landlord and the Respondent, I find that the monthly pad rental charged to the previous co-tenants remains a reasonable charge, which the landlord has included in the \$5,247.50 identified as owing in the 10 Day Notice. Since there is no dispute that rent was not paid for the pad rental for either September or October 2017, I find that the Respondent was responsible for paying \$650.00 of the amount identified as owing on the 10 Day Notice within five days of receiving that Notice.

The Respondent has not made application pursuant to section 39(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 39(5) of the *Act*, the Respondent's failure to take either of these actions within five days led to the end of this tenancy on the effective date of the notice. In this case, this required the Respondent to vacate the premises by October 18, 2017. As that has not occurred, I find that the landlord is entitled to an Order of Possession to take effect by January 15, 2018, which should give the Respondent ample time to make arrangements to relocate her manufactured home to the other manufactured home park site she has secured. The landlord will be given a formal Order of Possession which must be served on the Respondent. If the Respondent does not vacate the pad site by January 15, 2018, the landlord may enforce this Order in the Supreme Court of British Columbia.

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. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage and that the party has taken adequate measures to mitigate the other party's exposure to that loss.

Based on the evidence before me, I am satisfied that the Respondent has been attempting to remove her manufactured home from the landlord's manufactured home park in order to comply with the 10 Day Notice. I find that there is sufficient undisputed evidence to demonstrate that the landlord has taken unwarranted actions in parking vehicles in close proximity to the Respondent's manufactured home so as to prevent the out of town manufactured home park moving company from removing her home from the landlord's park. This evidence is also corroborated by the written evidence, which clearly suggests that the landlord was overstepping the landlord's rights in attempting to keep the Respondent's manufactured home on this site so as to increase the prospects of the landlord collecting on the unpaid rent owing from the previous owners of this manufactured home. Although the Respondent has speculated that the landlord was instrumental in coercing local manufactured home park moving companies from doing business with her, she has not presented sufficient evidence to support this allegation.

As I feel that the landlord's actions have not adequately mitigated the Respondent's ability to comply with the provisions of the 10 Day Notice, I find that the landlord's entitlement to a monetary award for unpaid pad rental is limited to September and October 2017, a total of \$650.00.

At the hearing, Landlord PW agreed to contact the local manufactured home moving companies to let them know that he has no objection to their working with the Respondent to remove her manufactured home from his park. To ensure that there is rapid compliance with the Order of Possession I am issuing, I order the landlord to call the two local manufactured home moving companies as soon as possible to convey his willingness to allow them to remove the Respondent's manufactured home from this manufactured home park to the location of the Respondent's choosing.

As the landlord has been partially successful in this application and has in fact at times interfered with the tenant's attempts to comply with the 10 Day Notice, I find that the landlord is entitled to recover only \$50.00 of the application fee from the tenant.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective by 1:00 p.m. on January 15, 2018. Should the Respondent fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour in the following terms, which is to recover unpaid rent and part of the landlord's filing fee:

Item	Amount
Unpaid September 2017 Rent	\$362.50
Unpaid October 2017 Rent	362.50
Recovery of ½ Filing Fee for this Application	50.00
Total Monetary Order	\$775.00

The landlord is provided with these Orders in the above terms and the Respondent must be served with this Order as soon as possible. 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. 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: December 15, 2017

Residential Tenancy Branch