



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RETIRE WEST COMMUNITIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, 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 representative at this hearing (the landlord) testified that he posted the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) on the door of the tenant's manufactured home on November 3, 2017. The tenant confirmed receiving that Notice. I find that the 10 Day Notice was duly served to the tenant in accordance with section 81 of the *Act*.

The landlord testified that he sent the tenant a copy of the landlord's dispute resolution hearing package and written evidence package by registered mail on November 23, 2017. The landlord said that the tenant accepted delivery of his package, but returned it by registered mail to the landlord the same day. The tenant explained that he does not read or write, so did not know what was contained in this package and simply had it returned to the sender without opening it. As the tenant was able to call into this dispute resolution hearing and admitted to having received the package sent to him, I find that the tenant was deemed in receipt of the landlord's dispute resolution hearing and written evidence packages on November 28, 2017, the fifth day after their mailing, and in accordance with sections 81, 82 and 83 of the *Act*.

Although the tenant was unable to read the documents provided to him, he was aware that the landlord was attempting to obtain possession of the manufactured home park site for non-payment of rent.

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

This tenancy for a manufactured home park site commenced on May 1, 2015. The monthly pad rental was set originally at \$300.00, payable in advance on the first of each month. Since 2015, the monthly pad rent increased to \$310.00 as of December 1, 2016, and \$323.00 as of December 1, 2017. According to the terms of the Tenancy Agreement, the landlord is entitled to charge a \$25.00 late fee for any late payments of the pad rental. Both parties confirmed that the landlord sold the manufactured home to the tenant, but continues to hold the mortgage on this manufactured home.

The landlord gave undisputed sworn testimony supported by written evidence that the tenant has failed to pay his pad rental for this site in October, November and December 2017.

The landlord's 10 Day Notice identified an amount owing as of November 1, 2017 of \$1,597.50. Much of this amount was comprised of mortgage payments, which the landlord has also charged the tenant for his purchase of this manufactured home from the landlord.

After reviewing the monetary order worksheet and the addendum attached to that worksheet, the landlord revised the amount owing for the rental of the manufactured home trailer site, late fees and the filing fee for this application as follows:

Item	Amount
Unpaid Pad Rental October 2017 plus Late Fee (\$310.00 + \$25.00 = \$335.00)	\$335.00

Unpaid Pad Rental November 2017 plus Late Fee (\$310.00 + \$25.00 = \$335.00)	335.00
Unpaid Pad Rental December 2017 plus Late Fee (\$323.00 + \$25.00 = \$348.00)	348.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Award Requested	\$1,118.00

Of the above amount, \$670.00 would have been owing when the landlord issued the 10 Day Notice on November 3, 2017, rather than the \$1,597.50, which included missed mortgage payments.

The tenant confirmed that he had been unable to pay his pad rental for October, November and December. He explained that he had told the landlord that he had been working for an individual who owed him more than this amount, but is experiencing difficulty collecting from that individual. He assured the landlord that as soon as he receives this pay for work already completed, he would be able to pay the landlord the outstanding rent.

The tenant also said that the landlord has not undertaken the work that was supposed to be completed to level his manufactured home to avoid ongoing structural damage. He said that the floor is rotting and the hot water tank has been leaking.

Analysis

There is undisputed written evidence and sworn testimony that the tenant failed to pay the \$670.00 in pad rental as part of the \$1,597.50 identified as owing in the 10 Day Notice within five days of receiving the 10 Day Notice. The tenant 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 tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to remove the manufactured home from the manufactured home site by November 17, 2017. As that has not occurred, I find that the landlord is entitled to an Order of Possession to take effect by 1:00 p.m. on January 31, 2018, the date identified by the landlord's representative at this hearing. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the manufactured home from the manufactured home site by that date and time, the landlord may enforce this Order in the Supreme Court of British Columbia to accomplish this task.

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. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 20(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.”

I find that there is undisputed evidence that the tenant has failed to pay pad rent and late fees for October, November and December 2017. I issue a monetary award in the landlord’s favour of \$335.00 for each of October and November 2017, and \$348.00 for December 2017.

The landlord’s claim for unpaid mortgage payments and late fees associated with those payments does not fall within the jurisdiction of the *Act*. The landlord will have to pursue other remedies separate from the *Act* to obtain those payments.

As the landlord has been successful in this application, I allow the landlord’s application to recover the \$100.00 filing fee from the tenant.

Conclusion

The landlord is provided with a formal copy of an Order of Possession effective at 1:00 p.m. on January 31, 2018, by which time the manufactured home is to have been removed from the landlord’s manufactured home park. 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 issue a monetary Order in the landlord’s favour under the following terms, which allows the landlord to recover unpaid rent and late fees plus the filing fee for this application:

Item	Amount
Unpaid Pad Rental October 2017 plus Late Fee (\$310.00 + \$25.00 = \$335.00)	\$335.00

Unpaid Pad Rental November 2017 plus Late Fee (\$310.00 + \$25.00 = \$335.00)	335.00
Unpaid Pad Rental December 2017 plus Late Fee (\$323.00 + \$25.00 = \$348.00)	348.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Award Requested	\$1,118.00

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant 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 18, 2017

Residential Tenancy Branch