



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPR

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 an Order of Possession for unpaid rent.

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 that the Application and the Notice of Hearing were personally served on the Tenant in the presence of a witness on October 18, 2017. As a result of the foregoing, and in the absence of evidence to the contrary, I find that the Tenant was personally served with the Application and the Notice of Hearing on October 18, 2017.

At the request of the Landlord, copies of the Decision and any applicable Orders will be mailed to them at the PO BOX indicated on their Application.

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

Aside from the Application and the Notice of Hearing, no documentary evidence was before me for consideration. However, the Landlord testified that a copy of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) was submitted with the Application. In the absence of the 10 Day Notice, I accepted the affirmed and undisputed testimony of the Landlord and requested that the Landlord submit to the Residential Tenancy Branch (the “Branch”) a copy of the 10 Day Notice by 4:30 on the date of the Hearing. The Landlord complied with this request and the 10 Day Notice submitted by the Landlord matched the

testimony provided in the hearing. As a result, I have accepted the 10 Day Notice for consideration in my decision.

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*?

Background and Evidence

The Landlord testified that the month to month tenancy began in July, 2017, and that rent in the amount of \$500.00 was due on the first day of each month. The Landlord testified that the Tenant only paid the first month's rent, and did not pay any rent thereafter. As a result, the Landlord testified that they personally served the Tenant the 10 day Notice on September 5, 2017, in the presence of a witness.

The 10 Day Notice in the documentary evidence before me, dated September 5, 2017, has an effective vacancy date of September 15, 2017, and indicates that as of September 5, 2017, the Tenant owed \$500.00 in unpaid rent. The 10 Day Notice also indicates that it was personally served on the Tenant on September 5, 2017.

The Landlord testified that since serving the 10 Day Notice, the Tenant has not paid any or filed for dispute resolution. The Landlord testified that although the Tenant vacated the property approximately three days ago, they are still requesting an Order of Possession which can be enforced in the event that the Tenant attempts to return.

Analysis

Section 39 of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

39 (1) A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

(2) A notice under this section must comply with section 45 *[form and content of notice to end tenancy]*.

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

However, section 39 of the *Act* also states:

- (4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect,
 - or
 - (b) dispute the notice by making an application for dispute resolution.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with section 81 of the *Act*, I find that the Tenant was served with the 10 Day Notice on September 5, 2017, the day it was personally served on them.

I also find that the Tenant was obligated to pay the monthly rent, on time and in full each month. As there is no evidence before me to the contrary, I find that the Tenant has failed to pay the rent owed in full as outlined above within the five days granted under section 39(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

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, September 15, 2017, and the Landlord is therefore entitled to an Order of Possession.

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.

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 6, 2017

Residential Tenancy Branch