



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0868732 B.C. LTD. (SUNRISE VALLEY MHP)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 48(4) of the *Manufactured Home Park Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on January 22, 2018, the landlord's agent served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 83 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, and in accordance with sections 82 and 83 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on January 27, 2018, the fifth day after their registered mailing.

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*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 60 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 65 of the *Act*?

Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a manufactured home park tenancy agreement which was signed by the landlord's agent and the tenant on April 15, 2011 indicating a monthly rent of \$288.55, due on the first day of the month for a tenancy commencing on April 15, 2011;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$1,417.00 for outstanding rent, comprised of the balance of unpaid rent owed as of January 01, 2018;
- A copy of a rental ledger which establishes the payments received and outstanding balance with respect to the tenancy;
- The landlord established the manner in which rent was raised from the initial \$288.55 stated in the tenancy agreement to the current amount of \$347.00 by providing copies of "Notice of Rent Increase" forms provided to the tenant during the course of the tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated January 11, 2018, which the landlord states was served to the tenant on January 11, 2018, for \$1,417.00 in unpaid rent due on January 01, 2018, with a stated effective vacancy date of January 22, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "EK" served the Notice to the tenant by way of leaving a copy in the mailbox or mail slot at the tenant's residence at 6:04 PM on January 11, 2018. The Proof of Service form establishes that the service was witnessed by "EP" and a signature for "EP" is included on the form.

The Notice restates section 39(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

Analysis

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlord must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

I have reviewed all documentary evidence provided by the landlord. Section 83 of the *Act* provides that because the Notice was served by way of leaving a copy in the mail box or mail slot at the tenant's residence, the tenant is deemed to have received the Notice three days after it was left in the mail box or mail slot. In accordance with sections 81 and 83 of the *Act*, I find that the tenant is deemed to have received the Notice on January 14, 2018, three days after it was left in the mail box or mail slot.

Section 39 of the *Act* provides, in part, the following with respect to a 10 Day Notice to End Tenancy for Unpaid Rent:

39 (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.

Section 48(2) of the *Act* provides, in part, the following with respect to a landlord's ability to request an order of possession of a rental unit:

Order of possession for the landlord

48 (2) A landlord may request an order of possession of a manufactured home site in any of the following circumstances by making an application for dispute resolution:

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

I find that, as the tenant received the Notice on January 14, 2018, the tenant's latest opportunity to either pay, in full, the amount listed on the Notice, or to file for dispute resolution to dispute the Notice, would have been January 19, 2018. By extension of the provisions of subsection 48(2)(b) of the *Act*, the landlord's earliest opportunity to apply for an Order of Possession would therefore have been January 20, 2018.

I find that the landlord has filed an application for an Order of Possession and a monetary Order via dispute resolution by Direct Request earlier than permitted by the *Act*, as the landlord filed an "Application for Dispute Resolution by Direct Request" on January 19, 2018, which, along with the application filing fee, was established as being received by the Residential Tenancy Branch on January 19, 2018.

I further find that the landlord has not provided any evidentiary material to demonstrate that the tenant received the Notice, dated January 11, 2018, earlier than January 14, 2018. Based on the foregoing, the landlord's application for an Order of Possession and a monetary Order based on unpaid rent is dismissed with leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

I dismiss the landlord's application with leave to reapply.

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: January 30, 2018

Residential Tenancy Branch