



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute codes OPR MNR

Introduction

This hearing was convened in response to the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for Orders as follows:

- an order of possession for unpaid rent pursuant to section 48;
- a monetary order for unpaid rent pursuant to section 60;

The hearing was conducted by conference call. All named parties attend this hearing and were given a full opportunity to provide testimony, to present evidence and to make submissions. The tenant initially disputed receiving the landlord's application but later confirmed that she did receive a 2-3 page Notice of Hearing which included the details of the application.

Preliminary Issue – Amendment to Landlord's Application

Paragraph 57(3)(c) of the Act allows me to amend an application for dispute resolution.

At the hearing, the landlord testified that the tenant had not yet vacated the rental unit and therefore asked to amend his claim to include outstanding rent for up until the hearing date. Although the tenant did not have prior notice of this claim, I find that the tenant should reasonably have known that the landlord would suffer this loss if the tenant neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request for an amendment.

Issues

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 tenant has been residing in this manufactured home park since June 2007. The tenancy with the current landlord began in July 2009. The original tenancy agreement named a different numbered company as the landlord. The landlord testified that he is the owner of the manufactured home park as well as the management company. The two companies have since been combined into one and now operate under the company name identified in this application. The current monthly rent as of January 1, 2018 is \$385.96 payable on the 1st day of each month. Prior to this latest rent increase, the rent was \$371.12.

The landlord testified that on October 2, 2017 he served the tenant with the 10 day Notice to End Tenancy for unpaid rent or utilities (the 10 Day Notice) by posting a copy to the door of the rental premises. A photo of the 10 Day Notice was also sent to the tenant by text message. The landlord testified that the next day, the tenant's cousin took the 10 Day Notice off the door. The landlord testified the tenant's cousin was looking after the property in the tenant's absence who had not resided in the rental unit for some time.

The landlord testified that the tenant did not pay the outstanding amount of rent as indicated in the Notice within five days of service of the Notice and has not paid any rent since. The landlord's monetary claim is for outstanding rent in the amount of \$1599.32. The landlord testified that this includes unpaid rent for the period of October 2017 to January 2018 plus a \$25.00 late fee for each of these months.

The tenant does not dispute the landlord's claim for outstanding rent and agreed to the outstanding amount as claimed by the landlord. The tenant testified that she has no money and she has been trying to sell the manufactured home which may now be going back to the bank. The tenant states she has not resided in the rental unit since June 2016 and she advised the landlord at this time that she would be listing it for sale. The tenant testified that as of September 2016 she also provided the landlord with a mailing address for service. She received last year's Rent Increase at this address but no other paperwork from the landlord until she received the application package. The tenant denied receiving any 10 Day Notice by text message. The tenant did acknowledge receiving a photo of the current rent increase by text message in September 2017.

The landlord replied that the tenant did not request that all documents be mailed to her. She did request a previous Rent Increase be mailed to her which is why he mailed it that time. All other documents were served by posting to the door of the rental unit. As

far as he knew, the tenant's cousin was receiving the documents posted on the door and forwarding to her.

Analysis

Section 39 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice.

In this case, the tenant did not dispute the landlord's claim that she has not been paid rent since October 2017. The tenant testified that she has no money to pay rent. Rather the tenant argued that she was not served with the 10 Day Notice. I find the tenant did receive the 10 Day Notice and accept the landlord's testimony that it was posted to the door of the rental unit and later removed by the tenant's cousin who was looking after the property. I also accept the landlord's testimony that a copy of the Notice was sent to the tenant via text message. Even if I found the tenant had not been served with the 10 Day Notice, which I do not, the tenant acknowledged that rent has not been paid since October 2017 and further acknowledged that she is not in any financial position to pay the outstanding rent.

I find that the Notice served by the landlord is in compliance with the Act and the landlord is entitled to an Order of Possession pursuant to section 48 of the Act.

Section 20 of the Act requires 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 accept the landlord's claim for outstanding rent in the amount of \$1599.32 as agreed to by the tenant.

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. Should the tenant(s) 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 the landlord a Monetary Order in the amount of \$1599.32. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court 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: January 19, 2018

Residential Tenancy Branch