



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Green Bay Landing Inc.
And [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNR; OPR; FF

Introduction

This is the Landlord's Application for Dispute Resolution, seeking an Order of Possession and Monetary Order for unpaid rent and to recover the cost of the filing fee from the Tenants.

This matter was originally scheduled as a Direct Request Proceeding pursuant to Section 55(4) of the Act. The reviewing Adjudicator found that both of the Tenants were deemed to have been served with the Notice of Direct Request Proceeding on January 26, 2018, by registered mail. An Interim Decision was rendered on January 15, 2018, which should be read in conjunction with this Decision.

On January 15, 2018, the reviewing Adjudicator determined that this matter was not suitable to be heard by way of Direct Request and adjourned it to a participatory Hearing in order to determine service of the Notice to End Tenancy and to determine whether this tenancy falls under the Residential Tenancy Act or the Manufactured Home Park Tenancy Act.

The participatory Hearing took place on February 6, 2018 at 9:30 a.m. The Landlord's agent SJ and the Landlord's lawyer KH both attended the Hearing.

The Landlord's agent SJ gave affirmed testimony at the Hearing. The Landlord provided copies of two registered mail receipts and tracking numbers. The receipts indicate that each of the Tenants was served with the Notice of Hearing documents by registered mail, sent on January 19, 2018. I find that both of the Tenants were duly served with notice of the Hearing. Section 90 of the Act deems service in this manner to be effective 5 days after mailing the documents.

Despite being deemed served with notice of the Hearing on January 24, 2018, neither of the Tenants attended the Hearing, which remained open for 20 minutes. The Hearing continued in their absence.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and Monetary Order for unpaid rent?

Background and Evidence

The Landlord, or its agent, gave the following documentary evidence and oral testimony:

The Notice to End Tenancy for Unpaid Rent issued December 4, 2017 (the "Notice") was served by affixing a copy of the Notice to the door of the rental unit on December 4, 2017. Based on the Landlord's agent's affirmed testimony, I find that the Tenants were deemed to have been served with the Notice on December 7, 2017, 3 days after posting the Notice to their door.

The Landlord's agent SJ testified that the Tenants rent the manufactured home site and the manufactured home from the Landlord. Therefore, I find that this is a residential tenancy matter, and that the Residential Tenancy Act applies.

This tenancy began on March 1, 2011. Monthly rent at the beginning of the tenancy was \$600.00, due on the first day of each month. Current monthly rent is \$665.80.

SJ testified that on January 23, 2018, the Tenants paid rent for the months of January to March, 2018, by e-transfer; however, a balance of \$15.80 remains outstanding, having been outstanding since December, 2017. The Landlord accepted the payment "for use and occupancy only" and provided a copy of an e-mail to the Tenant DT dated January 23, which provides:

"Thank you for your recent email transfer for January to March rent. Please be advised that we are accepting this on a use and occupancy basis only. Depending on how the hearing goes on February 6, 2018, we will return any remaining rent to you in accordance with the Residential Tenancy Act".

SJ submitted that rent was still owed for December, 2017, and therefore the Landlord is entitled to an immediate Order of Possession.

SJ testified that she is uncertain whether or not the Tenants paid a security deposit.

Analysis

The Tenants did not provide any documentary evidence and did not attend the Hearing, though duly served with notice. I accept the Landlord's undisputed evidence in its entirety.

I find that the Tenants did not pay the outstanding rent in full, or make an application to cancel the Notice, within 5 days of being deemed served with the Notice. I accept that the Landlord accepted the Tenants' payment on January 23, 2018, for use and occupancy only and that the Landlord did not reinstate the tenancy. I find that the tenancy ended on December 17, 2017, and that the Tenants are overholding. However, I reject the Landlord's submission that it is entitled to an immediate Order of Possession. I find that the Landlord's e-mail of January 23, 2018, accepted payments "for use and occupancy only" for up to and including March 31, 2018 ("for January to March rent"). I find that the e-mail is not clear that the Landlord would be seeking an immediate order of possession.

Therefore, pursuant to the provisions of Section 55 of the Act, I hereby provide the Landlord with an Order of Possession effective 1:00 p.m., March 31, 2018.

I further find that the Landlord is entitled to a Monetary Order in the amount of \$115.80, comprised of outstanding rent in the amount of \$15.80 and recovery of the cost of the filing fee. The Landlord's agent stated that she was unsure whether or not the Tenants had paid a security deposit. If the Landlord is holding a security deposit equal to or greater than \$115.80, pursuant to the provisions of Section 72 of the Act, the Landlord may deduct its monetary award from the security deposit and the enclosed Monetary Order becomes unenforceable. The remainder of the security deposit, if any, must be applied in accordance with the provisions of the Act. If the Landlord is not holding a security deposit, the Landlord may serve the Tenants with the enclosed Monetary Order and enforce the Order in the Provincial Court.

Conclusion

The Landlord is hereby provided with an Order of Possession effective 1:00 p.m., March 31, 2018, for service upon the Tenants. This Order may be enforced in the Supreme Court of British Columbia.

The Landlord is hereby provided with a Monetary Order in the amount of \$115.80, for service upon the Tenants. This monetary award may be deducted from any security deposit that the Landlord may hold. This Monetary Order may be enforced in the Provincial Court of British Columbia (Small Claims Court), with respect to any amount not deducted from a security deposit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 06, 2018

Residential Tenancy Branch