



Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

A matter regarding MIRAE INVESTMENTS LTD. (CALEDONIA 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 March 12, 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 March 17, 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 24, 2017 indicating a monthly rent of \$384.00, due on the first day of each month for a tenancy commencing on May 25, 2017;
- 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 \$1,302.00 for outstanding rent, comprised of the balance of unpaid rent owed as of February 01, 2018;

- A copy of a rental ledger which establishes the payments received and outstanding balance with respect to the tenancy. The ledger demonstrates that the landlord has included NSF fees and late fees to the cumulative balance of unpaid rent owed;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated February 20, 2018, which the landlord states was served to the tenant on February 20, 2018, for \$1,302.00 in unpaid rent due on February 01, 2018, with a stated effective vacancy date of March 02, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent "DS" served the Notice to the tenant by way of posting it to the door at which the tenant resides unit at 11:30 AM on February 20, 2018. The Proof of Service form establishes that the service was witnessed by "AS" and a signature for "AS" 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

I have reviewed all documentary evidence provided by the landlord. Section 83 of the *Act* provides that because the Notice was served by posting the Notice to the door, the tenant is deemed to have received the Notice three days after its posting. In accordance with sections 81 and 83 of the *Act*, I find that the tenant is deemed to have received the Notice on February 23, 2018, three days after its posting.

As part of the monetary claim established on the Direct Request worksheet, the landlord has included fees for which reimbursement cannot be sought by way of the Direct Request process. The information provided on the rental ledger provided by the landlord demonstrates that in calculating the cumulative balance of unpaid rent owed by February 01, 2018, the landlord has included NSF fees and late fees.

As reimbursement for additional fees, such as NSF fees and late fees, cannot be sought by way of the Direct Request process, I will consider only the portion of the monetary claim which arises from unpaid rent owed as of February 01, 2018. I note the landlord remains at liberty to file a separate Application for Dispute Resolution seeking to recover additional fees agreed upon by the parties in the tenancy agreement.

I find that the tenant was obligated to pay monthly rent in the amount of \$384.00, as established in the tenancy agreement. I accept the evidence before me that the tenant has failed to pay rental arrears in the amount of \$1,152.00, comprised of the balance of unpaid rent owed by February 01, 2018.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the 5 days granted under section 39 (4) of the *Act* and did not apply to dispute the Notice within that 5-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 corrected effective date of the Notice, March 05, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$1,152.00 for unpaid rent owed by February 01, 2018, as of March 08, 2018, the date on which the landlord's Application for Dispute Resolution by Direct Request was submitted.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

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 sections 60 and 65 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$1,252.00 for unpaid rent, and for the recovery of the filing fee for this application. 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 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: March 21, 2018

Residential Tenancy Branch