



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kahana Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, via teleconference, on March 19, 2018. The Landlord applied for the following relief, pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord's Agent, the "Agent", provided affirmed testimony at the hearing. The Tenant did not attend the hearing.

The Agent testified that he sent a copy of the Notice of Hearing along with supporting documentary evidence to the Tenant on January 23, 2018, by registered mail. The Agent stated that the Tenant does not currently live at the rental unit, but the Tenant had given him a forwarding address to her new residence in Merritt, BC, which is where he sent the package. I find the Tenant received this package on January 28, 2018, the fifth day after its registered mailing, pursuant to Section 83 of the *Act*.

The Agent has requested to amend his application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (4.2):

Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

In consideration of this, I allow the Agent to amend their application to include rent that has accrued since the original application date.

The Agent was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

The Agent testified that rent, in the amount of \$279.00, is due on the first day of each month. The Agent stated that he served the Tenant with a Notice of Rent Increase (from \$279.00 to \$289.00) in October of 2017, and the increase was effective on February 1, 2018.

The Agent testified that he sent the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the Tenant by registered mail on January 3, 2018. This Notice was for December rent (due on December 1, 2017) in the amount of \$279.00. The Agent stated that the Tenant has not paid any since he issued the 10 Day Notice, and now owes rent for December 2017, January 2018, February 2018, and March 2018.

Date	Item	Amount Due	Amount Paid	Accrued Balance Owing
December 1, 2017	Rent Due	\$279.00		\$279.00
January 1, 2018	Rent Due	\$279.00		\$558.00
February 1, 2018	Rent Due	\$289.00		\$847.00
March 1, 2018	Rent Due	\$289.00		\$1,136.00
Total Accrued Balance				\$1,136.00

Analysis

Based on the unchallenged affirmed testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 20 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 39 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 39(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 39(5) of the *Act*.

In this case, I find that the Tenant owed past due rent at the time the 10 Day Notice was issued on January 3, 2018. The Agent sent the 10 Day Notice to the Tenant by registered mail on January 3, 2018. I find the Tenant is deemed to have received the 10 Day Notice on January 8, 2018, 5 days after it was mailed, pursuant to section 83 of the *Act*. I note that documents may be deemed served, even if they are not retrieved by the recipient.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the Tenant made any payments. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant.

Next, I turn to the Agent's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence before me to demonstrate that the tenants owe and have failed to pay \$1,136.00 in past due rent.

Further, section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. Since the agent was successful in this hearing, I also order the Tenant to repay the \$100.00 fee the Agent paid to make the application for dispute resolution. In summary, I find the Agent is entitled to a monetary order in the amount of \$1,236.00.

Conclusion

The Landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the Landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The Landlord is granted a monetary order pursuant to Section 60 in the amount of \$1,236.00 comprised of rent owed. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 20, 2018

Residential Tenancy Branch