



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-DR

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 February 27, 2018, the landlord sent each of the tenants the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided copies of the Canada Post Customer Receipts containing the Tracking Numbers to confirm these mailings. Based on the written submissions of the landlord and in accordance with sections 82 and 83 of the *Act*, I find that each of the tenants has been deemed served with the Direct Request Proceeding documents on March 04, 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 a Request for Consent to Assign a Manufactured Home Site Tenancy Agreement form, showing a monthly rent in the amount of \$650.00, signed by the tenants on August 29, 2013, and the landlord on September 11, 2013;
- A copy of a Notice of Rent Increase – Manufactured Home Site form showing the rent being increased from \$744.42 to the current monthly rent amount of \$780.58 effective as of November 01, 2017;
- A copy of the Tenancy Rules and Regulations initialed by each tenant showing that the monthly rent is due on the first day of each month;
- A Direct Request Worksheet with a note to see attached statement. The statement attached to the 10 Day Notice indicates a balance of unpaid rent carried over from 2017 in the amount of 2,806.07 and January 2018 unpaid rent in the amount of 780.58;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was posted to the tenants' door at 2:00 p.m. on January 12, 2018; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 12, 2018, for \$3,586.65 in unpaid rent. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of January 25, 2018;.

Analysis

I have reviewed all documentary evidence and in accordance with sections 81 and 83 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on January 15, 2018, three five days after its posting.

I find that the tenants were obligated to pay the monthly rent in the amount of \$780.58, as per the tenancy agreement and the Notice of Rent Increase form.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the 5 days granted under section 39(4) of the *Act* and did not dispute the 10 Day Notice within that 5 day period

Based on the foregoing, I find that the tenants are conclusively presumed under section 39(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, January 25, 2018.

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 of 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. The onus is on the landlord to present evidentiary material that 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 find that the Direct Request Worksheet is incomplete and that there is a previous balance owed on the attached statement to the 10 Day Notice, prior to January 01, 2018, that has been forwarded with no explanation as to how the total amount of unpaid rent owing for 2017 has been calculated. For this reason I find that I am not able to confirm the total amount of unpaid rent owing for this tenancy.

As I am not able to determine the total amount of unpaid rent owing for this tenancy, the monetary portion of the landlord's application for unpaid rent is dismissed, with leave to reapply.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent owing as of February 20, 2018.

As the landlord has been successful in obtaining the Order of Possession, I allow them to recover their \$100.00 filing fee from the tenants.

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.

I dismiss the landlord's application for a Monetary Order for unpaid rent, with leave to reapply.

Pursuant to sections 60 and 65 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 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 08, 2018

Residential Tenancy Branch