



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0868732 B.C. Ltd. (Sunrise Valley MHP)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM, FFL

Introduction

On February 20, 2018, an adjudicator appointed pursuant to the Manufactured Home Park Tenancy Act (the *Act*) considered the landlord's application for dispute resolution using the Residential Tenancy Branch's direct request process. As the adjudicator did not believe there was sufficient information provided whereby she could conduct an *ex parte* hearing of this matter, she adjourned the landlord's application to a participatory hearing in her Interim Decision of February 20, 2018.

I have been delegated authority to consider the landlord's application for the following in this participatory hearing:

- an Order of Possession for unpaid rent pursuant to sections 39 and 48 of the *Act*
- monetary compensation for unpaid rent pursuant to section 60 of the *Act*
- recovery the filing fee for this application pursuant to section 65 of the *Act*

Both parties, either personally or via their duly appointed representatives, attended the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord's representative EKB testified that she served copies of the Interim Decision and the Notice of Reconvened Hearing, and written evidence, as was required in the Interim Decision, on the tenant via registered mail on February 23, 2018. The tenant confirmed that she received these documents sometime in February although she was not sure of the exact date. In accordance with sections 82 and 83 of the *Act*, I find that the tenant has been served with the above documents in compliance with the *Act*.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent?
- Is the landlord entitled to a monetary award for unpaid rent?
- Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord filed a copy of a tenancy agreement which was signed by the landlord's agent and the tenant on June 29, 2014, for a tenancy commencing on June 29, 2014.

The tenancy agreement filed by the landlord is does not fulfill the requirements as set out in section 13 of the *Act*, as it does not specify the amount of rent owed with respect to the tenancy. Rather, on the tenancy agreement, in the field where the parties are to enter the agreed upon amount of rent payable, there is not any amount indicated.

The tenancy agreement contains an additional deficiency, as it does not specify the day in the month, or in any other period on which the tenancy is based, on which the rent is due.

The tenant gave uncontradicted testimony that the monthly rent payable in 2017 was \$343.00 per month and, that the rent was payable on the 1st day of each month. This evidence is consistent with and supported a rental ledger which establishes the payments received and outstanding balance with respect to the tenancy, prepared and filed by the landlord. The tenant agreed that there was an increase in rent on an annual basis and, did not dispute that rent was payable at the rate of \$355.00 per month from January 1, 2018, onwards.

The landlord filed a copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated January 12, 2018, which the landlord states was served to the tenant on January 12, 2018, for \$2,165.00 in unpaid rent due on January 01, 2018, with a stated effective vacancy date of January 22, 2018.

The landlord as also filed a copy of the Proof of Service of the 10 Day Notice showing that the landlord's agent "EB" served the 10 Day Notice on the tenant by way of leaving a copy in the mailbox or mail slot at the tenant's residence on January 12, 2018. The Proof of Service form establishes that the service was witnessed by "EP" and a signature for "EP" is included on the form.

The 10 Day 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.

Section 83 of the *Act* provides that because the 10 Day Notice was served by leaving a copy in the mail box or mail slot at the tenant's residence, the tenant is deemed to have received the 10 Day Notice three days after it was left in the mail box or mail slot. In accordance with sections

81 and 83 of the *Act*, I find that the tenant is deemed to have received the 10 Day Notice on January 15, 2018, three days after it was left in the mail box or mail slot.

The evidence of both the landlord's representatives and the tenant confirm that the tenant did not apply to dispute the Notice within five days from the date of service and that the tenant did not pay the rental arrears of \$2,165.00 due by January 20, 2018, or at any time after that.

During the hearing, the landlord's representative YPP testified that the tenant has not vacated the rental site and, has not paid the full rent owing to the landlord since the 10 Day Notice was issued. Consequently, she requested an increase in the monetary award the landlord was seeking for unpaid rent to include an additional \$355.00 for each of the months of January, February, March, April and, May of 2018. As the tenant: was clearly aware that rent became due the first of each month; did not dispute the amount owing per month; did not dispute that rent was not paid in full for any month in 2018; I allow the landlord's representatives oral request to amend the amount of unpaid rent sought in this application.

The landlord's representative YPP also requested an amendment to the monetary award to claim a \$25.00 late fee for each month in 2018 when the rent was not paid in full on the first of the month. However, section 5 of the Manufactured Home Park Tenancy Regulations provides that a late fee is only payable if it is a term of the tenancy agreement. In the present case it is not so this request to amend the application is denied.

There have been several payments made by the tenant in 2018, and both parties agreed with both the dates and the amounts of these payments. The current monetary award sought by the landlord for unpaid rent is broken down as follows:

Item	Amount
Unpaid Rent per 10 Day Notice	\$2,165.00
Unpaid January 2018 Rent	355.00
Unpaid February 2018 Rent	355.00
Unpaid March 2018 Rent	355.00
Unpaid April 2018 Rent	355.00
Unpaid May 2018 Rent	355.00
Less January 22, 2018 payment	-380.00
Less February 6, 2018 payment	-350.00
Less February 22, 2018 payment	-375.00
Total Rent Claimed	\$2,835.00

The tenant gave evidence that she felt the amount on the 10 Day Notice was incorrect and that at the most she was 2 months in arrears of rent in January of 2018. She stated that she has records of all payments she had made however, these were not in evidence or currently available to her due to a recent death in the family. She did not request an adjournment and accordingly the hearing proceeded as scheduled. Several times during her evidence she made reference to the sum of \$700.00 that she paid for rent twice in 2016; once in cash and once via a money order. She expressed concern that she had not received credit for the second \$700.00 paid by money order.

The landlord's representatives gave evidence that amount on the Notice was correct and pointed to a number of printouts that were entered into evidence to show the actual balance owing by the tenant at various points in time. Page 27 of the evidence package is a Customer Balance Detail Sheet confirming the total of \$2,165.00 was owing by the tenant for rent as of January 1, 2018. In response to the concern of the tenant regarding her getting credit for the \$700.00 paid by money order back in 2016, the representative of the landlord, YPP was able to refer me to page 28 of the evidence package that confirms credit has in fact been given to the tenant for this payment.

Where there was any conflict as between the evidence of the tenant and the evidence of the representatives of the landlord, I found the evidence of the representatives of the landlord to be more reliable.

Analysis

The 10 Day 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.

There is uncontradicted evidence that the tenant failed to pay the rent identified as owing in the 10 Day Notice in full within five days of receiving that Notice. There is uncontradicted evidence that the tenant did not make application pursuant to section 39(4) of the *Act* within five days of receiving the 10 Day Notice.

In accordance with section 39(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of her tenancy on the corrected effective date of the notice. In this case, this required the tenants to vacate the premises by January 25, 2018. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Section 60 of the *Act* establishes that if damage or loss results from a party not complying with the *Act*, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the

party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7 (1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

Section 20 (1) of the *Act* establishes 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.”

In this case, there is reliable evidence that establishes on the balance of probabilities that the tenant has not paid the rent owing for 2017, in full and has overheld her tenancy without paying rent for any month in 2018, in full. Under these circumstances, I allow the landlord's application for a monetary award for unpaid rent of \$2,835.00.

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 from the tenants.

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). 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 issue a monetary Order under the following terms, which allows the landlord to recover unpaid rent owing and the filing fee for this application:

Item	Amount
Unpaid Rent Owing	\$2,835.00
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$2,935.00

The landlord is provided with an Order in the above terms and the tenant must be served with the Order as soon as possible. Should the tenant fail to comply with the monetary Order, it 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: May 03, 2018

Residential Tenancy Branch