



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TIMBERLANDS PROPERTIES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNRL, OPR, FFL

Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Manufactured Home Park Tenancy Act* (the “*Act*”) for a Monetary Order for unpaid rent, an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), and for the recovery of the filing fee paid for this application.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenant during the approximately 15-minute hearing. As the Tenant was not present, service of the Notice of Dispute Resolution Proceeding package (the “Notice of Hearing”) was addressed.

The Landlord provided affirmed testimony that the Notice of Hearing along with a copy of the Landlord’s evidence was sent to the Tenant by registered mail on June 2, 2018. The registered mail tracking number was submitted in evidence and is included on the front page of this decision. Entering the tracking number on the Canada Post website confirms that the package was claimed.

I accept that the Notice and Hearing package and the Landlord’s evidence was duly served in accordance with Section 52(3) of the *Act*.

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

Is the Landlord entitled to a Monetary Order for unpaid rent?

Should an Order of Possession be issued to the Landlord?

Should the Landlord be granted the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord provided affirmed and undisputed testimony regarding the tenancy. The tenancy began in 2011 and monthly rent was set at \$409.00. Monthly rent was increased during the tenancy and in 2017 was \$471.00 per month. Current monthly rent is \$489.00 per month after a rent increase took effect on May 1, 2018.

The Landlord testified that starting in 2015, rent paid by the Tenant was occasionally returned to the Landlord as non-sufficient funds (NSF). However, rent during this period was still paid, despite the occasional late payment.

The Landlord testified that at the end of 2016, three months of rent was outstanding and in 2017 four months of rent was unpaid.

The Landlord testified that they filed an Application for Dispute Resolution in 2017 and after the hearing they were issued a Monetary Order and an Order of Possession. The Landlord stated that after receiving the Monetary Order, the Tenant paid all of the rent owing and the Landlord decided not to enforce the Order of Possession.

The Landlord stated that rent from September to December 2017 was not paid. In January 2018, the Tenant made one payment of \$750.00 and has not paid any amount towards the rent owing since then.

The Landlord is also claiming \$25.00 per month in late payment fees for the months of September 2017 to July 2017, except for January 2018 when a \$750.00 payment was made. The tenancy agreement was submitted in evidence and states a late rent fee of \$25.00 per month. The tenancy agreement was signed by the Tenant and Landlord in 2011.

On May 7, 2018, the Landlord served the Tenant with a 10 Day Notice by posting it on the Tenant's door. The 10 Day Notice listed rent due in the amount of \$3,700.00 and stated the effective end of tenancy date as May 21, 2018.

The Landlord testified that they have not received any notification that the Tenant has applied to dispute the 10 Day Notice and they have not received any payments towards the rent owing since issuing the 10 Day Notice.

Analysis

Based on the undisputed testimony of the Landlord, I find as follows:

In accordance with Section 39(1) of the *Act*, a 10 Day Notice may be issued on any day after the day the rent is due if an amount of rent is owing. I accept the testimony and evidence of the Landlord that when the 10 Day Notice was issued on May 7, 2018, rent in the amount of \$3,700.00 was outstanding.

Section 39(4) of the *Act* provides 5 days for a tenant who has received a 10 Day Notice to pay the overdue rent or to file an application to dispute the notice. I find that there is no evidence before me that the Tenant applied to dispute the notice within the 5 days allowable and I accept the testimony of the Landlord that outstanding rent has not been paid.

Pursuant to Section 39(5) of the *Act*, if a tenant does not pay the rent or file to dispute the notice, they are conclusively presumed to have accepted that the tenancy ends on the date stated on the notice. As such, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended as of May 21, 2018.

A two (2) day Order of Possession will be granted to the Landlord in accordance with Section 48(2)(b) of the *Act*.

I also accept the evidence before regarding the outstanding rent that is due. I find that no rent has been paid from September 2017, except for a payment of \$750.00 in January 2018.

Although the Landlord did not initially claim for rent for July 2018, since the Application for Dispute Resolution was filed prior to July, the Landlord testified that rent for July 2018 was not paid. As such, I accept that adding July 2018 rent to the Landlord's claim

is reasonable and to be expected by the Tenant and thus will be added to the monetary claim.

I also accept the Landlord's testimony that unpaid rent for the period of September 2017 to April 2018 was \$471.00 per month and was increased to \$489.00 for May 1, 2018.

The Landlord has also claimed for \$250.00 in late payment fees, in the amount of \$25.00 per month for the months of September 2017 to December 2017 and February 2018 to July 2018. This fee is not being charged for January 2018 as rent was paid on time for this month.

I refer to Section 5(1)(d) of the *Manufactured Home Park Tenancy Regulation* (the "*Regulation*") which states that a landlord may charge a late payment fee of up to \$25.00 per month. I also refer to Section 5(2) of the *Regulation* which allows for the late fee to be charged only if it is stated in the tenancy agreement.

The tenancy agreement was submitted into evidence and I find that it does state that a late fee of \$25.00 per month will be charged if rent is paid late. I accept that the Tenant was aware of this fee and find that the Landlord is entitled to the recovery of the late rent payment fees at \$25.00 per month.

As the Landlord was successful in their claim, I also award the recovery of the filing fee paid for this application in the amount of \$100.00, pursuant to Section 65 of the *Act*.

A Monetary Order will be issued to the Landlord in the amount outlined below.

Monetary Order Calculations

September 2017 to April 2018 rent (8 months at \$471.00 per month)	\$3,768.00
May 2018 to July 2018 rent (3 months at \$489.00 per month)	\$1,467.00
Less payment made January 2018	(\$750.00)
Late payment fees September to December 2017 and February to July 2018 (10 months at \$25.00 per month)	\$250.00
Recovery of filing fee	\$100.00
Total owing to Landlord	\$4,835.00

Conclusion

I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant 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 grant the Landlord a **Monetary Order** in the amount of **\$4,835.00** for outstanding rent owed, late rent payment fees and the recovery of the filing fee. 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: July 20, 2018

Residential Tenancy Branch