



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR-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 August 11, 2018, the landlord's agent served the executor of the tenant's estate, "MC", with the Notice of Direct Request Proceeding by way of personal service via hand-delivery. The personal service was confirmed as the executor of the tenant's estate, "MC", acknowledged receipt of the Notice of Direct Request Proceeding by signing an accompanying document in which he attests to having received the Notice of Direct Request Proceeding documents.

Based on the written submissions of the landlord, and in accordance with section 82 of the *Act*, I find that the tenant has been duly served with the Direct Request Proceeding documents on August 11, 2018.

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 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 manufactured home park tenancy agreement which was signed by the landlord's agent and the tenant, indicating a monthly rent of \$525.00, due on the first day of each month;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes that there is unpaid rent owed in the amount of \$540.00, comprised of the balance of unpaid rent owed by June 01, 2018;
- Copies of an affidavit signed by the executor of the estate of the tenant, in which the executor acknowledged that the estate of the tenant is in arrears with respect to unpaid rent owed under the tenancy;
- A letter dated August 11, 2018, signed by the executor of the tenant's estate, in which the executor consents to the landlord obtaining an order of possession based on unpaid rent;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated June 04, 2018, which the landlord states was served to the tenant on June 04, 2018, for \$540.00 in unpaid rent due on June 01, 2018, with a stated effective vacancy date of June 18, 2018; and
- A copy of the Proof of Service of the Notice showing that the landlord's agent served the Notice to the tenant by way of posting it to the door of the manufactured home on June 04, 2018. The Proof of Service form establishes that the service of the Notice was witnessed and a name and signature for the witness are 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 June 07, 2018, three days after its posting.

I find that the tenant was obligated to pay monthly rent in the amount of \$525.00, 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 \$525.00, comprised of the balance of unpaid rent owed by June 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 effective date of the Notice, June 18, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession based on the June 04, 2018 Notice served to the tenant for unpaid rent owed by June 01, 2018.

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 \$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: August 16, 2018

Residential Tenancy Branch