



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CRYSTAL RIVER COURT LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL MNRL OPR

Introduction

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and utilities, pursuant to section 48;
- a monetary order for unpaid rent and utilities pursuant to section 60; and
- authorization to recover the filing fee for this application, pursuant to section 65.

The landlord's agent, JN ('the landlord'), testified on behalf of the landlord in this hearing and was given full authority to do so by the landlord. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

The landlord testified that the tenant was served by way of Registered Mail on June 9, 2018. The landlord provided the tracking information in their evidence. In accordance with sections 81 and 82 of the *Act*, I find that the tenant was duly served with the application and evidence.

The tenant confirmed receipt of the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated June 2, 2018. Accordingly, I find that the 10 Day Notice was served to the tenant in accordance with section 81 of the *Act*.

Although the landlord applied for a monetary Order of \$141.02 in their initial claim, since they applied another \$801.74 in rent has become owing that was not included in their application. I have accepted the landlord's request to amend their original application from \$141.02 to \$842.76 (plus \$100.00 filing fee totaling \$942.76) to reflect this additional unpaid rent that became owing by the time this hearing was convened.

Preliminary Issue: Adjournment of Hearing

At the outset, the tenant made an application requesting an adjournment as the tenant's legal counsel was unavailable for the hearing. The tenant testified that she suffered from mental

health issues, and is also on medication including muscle relaxers. The tenant's legal counsel is her brother-in-law who is travelling from New Brunswick, and was unable to call into the hearing. The landlord opposed the application for an adjournment stating that the matter had been outstanding since June 2018, and the tenant has failed to pay rent since the 10 Day Notice was issued. The landlord testified that the tenant had ample opportunity to prepare for this hearing, and an adjournment would be extremely prejudicial to him. The landlord testified that as the tenant has not paid rent, an adjournment would not change the outcome of the hearing.

In deciding whether the tenant's adjournment application would be granted, I considered the following criteria established in Rule 7.9 of the RTB *Rules of Procedure*, which includes the following provisions:

Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*
- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

The tenant testified that she suffered from mental health issues, and was also on medication. While I am sympathetic to the tenant's situation, I find that the tenant failed to establish how this adjournment request was due to issues beyond her control. I find that the tenant had several months to prepare for this hearing, and the tenant has failed to establish why her legal counsel was unable to attend this scheduled hearing by telephone. I am not satisfied that the adjournment request was not due to the intentional actions or neglect of the tenant. I also took in consideration that the tenant's social worker was in attendance at the hearing, and was able to provide some support and assistance.

Furthermore, as this matter pertains to the matter of a significant amount of unpaid rent, I find the landlord would be significantly prejudiced by a delay in this matter by adjourning the hearing and delaying this matter.

The request for an adjournment was not granted. The hearing proceeded.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This month-to-month tenancy began in January of 1988, with monthly rent currently set at \$400.87 as of June 2018, which is payable on the first day of each month. .

The landlord issued the 10 Day Notice to the tenant as the tenant has failed to pay rent since June 2018. The tenant continues to reside at the unit, and it was undisputed by the tenant that the rent for June, July, and August 2018 have not been paid in full. The tenant testified that the rent payments are normally paid directly by another party, but the party has stopped all payments.

The landlord seeks a monetary order of \$842.76 for the unpaid rent, which includes the \$41.02 outstanding for June 2018, the \$400.87 still owing for the months of July and August 2018.

Analysis

Section 20 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

20 (1) 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.

Based on the testimony of the landlord and the tenant and the supporting documents respecting matters of rent, I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid.

The tenant has not paid the outstanding rent and nor has she applied for dispute resolution to dispute the 10 day Notice. The tenant has only confirmed that the rent has not been paid to the landlord and she does not have a right *under the Act* to deduct or withhold rent. Therefore the landlord's application for an Order of Possession is allowed. Effectively, as of June 12, 2018, the date indicated on the 10 day Notice, the tenancy has come to an end.

The tenant did not dispute the fact that the following rent remains outstanding: \$41.02 for June 2018 and \$400.87 each for the months of July and August 2018. I find that the landlord is entitled to the \$3,764.00 in unpaid rent.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

Conclusion

I find that the landlord's 10 day notice is valid and effective as of June 12, 2018.

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.

As the landlord was successful in this application, I find that he is entitled to recover the \$100.00 filing fee.

I issue a \$942.76 Monetary Order in favour of the landlord under the following terms, which allows the landlord to recover unpaid rent plus the filing fee for this application.

Item	Amount
Unpaid Rent for June 2018	\$41.02
Unpaid Rent for July 2018	400.87
Unpaid Rent for August 2018	400.87
Recovery of Filing Fee for this Application	100.00
Total Monetary Order	\$942.76

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 8, 2018

Residential Tenancy Branch