



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act"). The landlord originally applied by way of direct request proceeding, which was adjourned to a participatory dispute resolution hearing. The landlord seeks the following remedies under the Act:

1. an order of possession for unpaid rent;
2. a monetary order for unpaid rent; and,
3. a monetary order for recovery of the filing fee.

A dispute resolution hearing was convened at 9:30 a.m. on October 22, 2018, and the landlord and tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and call witnesses. The parties did not raise any issues with respect to the service of the Notice of Dispute Resolution Proceeding.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure* and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to a monetary order for recovery of the filing fee?

Background and Evidence

The landlord testified and confirmed that the tenancy began on August 1, 2017 and is a month-to-month tenancy. The tenant has lived in the park for about five years, but the tenancy was renewed with a change of ownership or management. Monthly rent is \$550.00 and is due on the first of the month.

The landlord further testified that the tenant currently owes outstanding rent in the amount of \$5,150.00. In addition to this amount claimed, the landlord seeks \$500.00 in late fees, which he has discounted from a significantly higher amount. (Late fees are calculated at \$2.50 per day, which would be much higher than the amount sought.) The landlord also seeks compensation of \$100.00 for recovery of the filing fee.

On June 11, 2018, the landlord served the tenant with a 10 Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") for unpaid rent of \$2,750.00 (plus late fees) as of June 1, 2018. The Notice was served by the landlord on the tenant by being posted on the door on June 11, 2018, and the effective end of tenancy date was June 24, 2018.

In support of his claim, the landlord submitted into evidence copies of a written tenancy agreement, the Notice, proof of service documents, and a monetary order worksheet.

In response, the tenant disputed that he received the Notice on June 11, stating that he did not receive the Notice until end of July, or the middle of July, or possibly August.

Regarding the unpaid rent, the tenant testified that "I do owe him some money, no doubt about it." He testified that he tried paying the landlord some of the money owed (e.g., \$1,100.00) in early September, but the landlord refused to accept it. As for not paying rent for October, the tenant explained that he "didn't pay the October rent because [the landlord] wasn't accepting it earlier."

In summary, the tenant said that he owes unpaid rent, but simply needs a little of time to take care things that will allow him to pay the outstanding amount.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 20 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or some of the rent. Pursuant to section 39 of the Act, the Notice informed the tenant that the Notice would be cancelled if the tenant paid rent within five days of service. The Notice also explained that the tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The landlord testified, and provided documentary evidence to support his submission, that the tenant did not pay rent when it was due for several months up to and including October 2018, and that there is a significant amount of rent owing. There is insufficient evidence before me that the tenant had a right under the Act to deduct some or all of the rent, and no evidence indicating that the tenant applied to cancel the Notice.

While the tenant disputed that he received the Notice on June 11, 2018, the tenant did ultimately receive the Notice, and would therefore have been aware of his obligation to pay rent or apply for dispute resolution.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving his claim that the tenant owes \$5,650.00 in rent and late fees. Thus, I grant the landlord a monetary award in the amount of \$5,650.00.

As the landlord is successful in his claim, I grant the landlord a further monetary award in the amount of \$100.00 for recovery of the filing fee.

Regarding the order of possession sought by the landlord, section 48(2)(b) of the Act states that

A landlord may request an order of possession of a manufactured home site in any of the following circumstances by making an application for dispute resolution: [. . .]

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

In this case, the landlord applied for dispute resolution seeking an order of possession, the landlord issued a notice to end the tenancy, the tenant did not dispute the Notice,

and the time for making that application has expired. Therefore, I grant the landlord an order of possession.

Conclusion

I grant the landlord an order of possession, which must be served on the tenant and is effective two (2) days from the date of service. The order of possession may be filed in the Supreme Court of British Columbia and enforced as an order of that court.

I grant the landlord a monetary order in the amount of \$5,750.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia (Small Claims).

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: October 22, 2018

Residential Tenancy Branch