



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL, 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 pursuant to section 48; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 65;

Issue(s) to be Decided

Is the landlord entitled to an Order for Possession and to recover his filing fee?

Background and Evidence

The tenant did not attend this hearing, although I waited until 9:42 am to enable the tenant to connect with this teleconference hearing scheduled for 9:30 am. The landlord attended the hearing, represented by its agent, NA (the landlord) and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord gave testimony that he is seeking an Order of Possession against the estate of a deceased tenant (tenant). The landlord testified that the tenancy began in August of 2005 and continued as a month to month tenancy until the tenant passed away sometime before November of 2018. The current rent is \$473.16 per month and nobody has lived in the manufactured home since the tenant's passing.

The landlord testified that the estate of the tenant is being administered by the tenant's daughters. He sent the Notice of Dispute Resolution Proceedings Hearing packages to each of the three daughters of the tenant by registered mail on November 20, 2018 and provided three Canada Post tracking numbers as proof of service.

The landlord provided evidence of a 10 Day Notice to End Tenancy for Unpaid Rent dated November 3, 2018 (10 Day Notice) indicating unpaid rent in the amount of \$473.16 that was due on November 1, 2018. The landlord gave testimony, supported by a witnessed, written Proof of Service document, that he left a copy of the 10 Day Notice in the mailbox at the tenant's residence on November 3, 2018.

The Notice restates section 39 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 alleges that the tenant's estate did not pay the rental arrears.

Analysis

As per Section 83 of the *Act*, because the dispute resolution hearing package was served by registered mail, the tenant is deemed to have received it five days after mailing, on November 25, 2018. I am satisfied that the landlord's dispute resolution hearing package and written evidence were served to the tenant in accordance with section 81 to 83 of the *Act*.

Section 83 of the *Act* provides that because the 10 Day Notice was served by leaving it in the mailbox, the tenant is deemed to have received the 10 Day Notice 3 days after doing so, on November 6, 2018. I am satisfied that the 10 Day Notice was served upon the tenant in accordance with sections 81 to 83 of the *Act*.

I find that the tenant was obligated to pay monthly rent in the amount of \$473.16, as established by the landlord's testimony. I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the five days granted under section 39(4) of the *Act* and did not apply to dispute the Notice within that five-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 corrected effective date of the Notice, November 11, 2018.

Therefore, I find that the landlord is entitled to an Order of Possession.

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 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 65 the *Act*, I find that the landlord is entitled to a Monetary Order in the amount of \$100.00 to recover 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, 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: January 03, 2019

Residential Tenancy Branch