



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LOMBARDY MANAGEMENT
LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, FFL

Introduction

This hearing dealt with an application by the landlord under the *Manufactured Home Park Tenancy Act* (the *Act*) for the following:

- An order for possession pursuant to sections 40 and 48;
- Authorization to recover the filing fee for this application pursuant to section 65.

The landlord's agent LH ("the landlord") attended the hearing. The tenant did not attend the hearing. I kept the teleconference line open from the time the hearing was scheduled, plus an additional twelve minutes, to allow the tenant the opportunity to call. The teleconference system indicated only the landlord and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

The landlord was given an opportunity to present affirmed testimony, call witnesses and submit evidence.

The landlord testified the landlord sent the Notice of Hearing and Application for Dispute Resolution to the tenant by registered mail on December 19, 2018. The landlord provided the Canada Post tracking number referenced on the first page of this decision in support of service. Section 83 of the *Act* deems the tenant to have received the documents 5 days later, on December 24, 2018. I find the landlord served the tenant pursuant to sections 82 and 83 on December 24, 2018.

At the outset, the landlord requested the following:

- Amendment of the application to include a request for a monetary order for outstanding rent for the months of December 2018 and January 2019 in the amount of \$850.00 each for a total of \$1,700.00; and

- Amendment of the application to include authorization to apply the security deposit of \$425.00 to a monetary award.

The landlord submitted a copy of the 10 Day Notice to End Tenancy for Nonpayment of Rent (“the Ten-Day Notice”) dated December 2, 2018 which included a claim for nonpayment of rent for December 2018 in the amount of \$850.00; the landlord provided affirmed testimony and proof of service of the Notice on the tenant on December 2, 2018. The landlord also provided a tenancy ledger indicating that the tenant had not paid any rent since that time and rent for the month of January 2019 had subsequently accrued.

The landlord submitted testimony that the tenant paid a security deposit of \$425.00 at the beginning of the tenancy which the landlord holds. The tenant has not provided written authorization to the landlord to apply the security deposit to outstanding rent.

Rule 4 of the *Rules of Procedure* allow for the amendment of an application at the hearing in circumstances that can reasonably be anticipated; if sought at the hearing, such an amendment need not be submitted or served.

In consideration of the evidence filed and the testimony of the landlord, further to Rule 4, I find the tenant could reasonably have anticipated that the landlord would claim a monetary order for outstanding rent for December 2018 and January 2019 as well as authorization to apply the security deposit the landlord holds to the monetary award. I accordingly allow the landlord to amend the application as sought.

Issue(s) to be Decided

- Is the landlord entitled to an order of possession pursuant to sections 40 and 48 of the *Act*?
- Is the landlord entitled to a monetary order pursuant to section 60 of the *Act*?
- Is the landlord entitled to apply the security deposit to the monetary order pursuant to section 65 of the *Act*?
- Is the landlord entitled to reimbursement of the filing fee pursuant to section 65 of the *Act*?

Background and Evidence

The landlord testified the landlord entered into a month-to-month tenancy agreement with the tenant commencing August 1, 2018 for rent of \$850.00 a month payable on the first of the month.

At the start of the tenancy, the tenant provided a security deposit of \$425.00. The landlord holds the deposit. The tenant has not provided written authorization to the landlord to apply the deposit to outstanding rent.

The landlord submitted a copy of the tenancy agreement.

The landlord testified the tenant paid rent on November 1, 2018 and has not paid rent for December 2018 or January 2019. The landlord provided a rental ledger showing the rent owing during the relevant portion of this tenancy.

The landlord testified the landlord issued the Ten-Day Notice and served the tenant by attaching the Notice to the window next to the main door of the unit on December 2, 2018, thereby effecting service under the *Act* 3 days later, that is, on December 5, 2018. The landlord submitted a copy of the Ten-Day Notice and a witnessed Proof of Service form. The Ten-Day Notice has an effective date of December 12, 2018 (corrected to December 15, 2018).

The landlord testified the tenant did not pay the outstanding rent within 5 days after service of the Ten-Day Notice and did not bring an application for dispute resolution. The landlord submitted a copy of a rental ledger in support of the claim for outstanding rent for December 2018 and January 2019. The landlord provided uncontradicted testimony the full amount claimed remains unpaid and owing to the landlord.

The landlord requests an order of possession, a monetary award for \$1,700.00 for rent outstanding for two months, authorization to apply the deposit of \$425.00 to the monetary award, and reimbursement of the filing fee, calculated as follows:

ITEM	AMOUNT
Outstanding rent (\$850.00 x 2)	\$1,700.00
Reimbursement of filing fee	\$100.00
(Less deposit)	(\$425.00)
Monetary Order Requested	\$1,375.00

The tenant continues to occupy the unit.

Analysis

I have reviewed all documentary evidence and testimony.

I find the form and content of the Ten-Day Notice complies with section 45 the *Act*.

I find the landlord served the tenant with the Ten-Day Notice on December 5, 2018 in accordance with sections 81 and 83 the *Act*.

I find the tenant did not pay the overdue rent or dispute the Ten-Day Notice within the five-day period following service.

Therefore, pursuant to section 39(5), the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, December 12, 2018, (corrected to December 15, 2018) requiring the tenant to vacate the rental unit by that date.

As the tenant continues to occupy the unit, I find the landlord is entitled to an order of possession under sections 40 and 48 the *Act*, effective two days after service.

I therefore grant the landlord an order of possession effective two days after service.

Based on the uncontradicted evidence of the landlord, I grant the landlord a monetary award for outstanding rent pursuant to section 65 in the amount of \$1,700.00.

I grant the landlord authority to apply the security deposit to the monetary award.

As the landlord was successful in this application, I grant a monetary order in the amount of \$100.00 for reimbursement of the filing fee.

In summary, I grant the landlord a monetary order in the amount of \$1,375.00 calculated as follows:

ITEM	AMOUNT
Outstanding rent (\$850.00 x 2)	\$1,700.00
Reimbursement of filing fee	\$100.00
(Less deposit)	(\$425.00)
Monetary Order	\$1,375.00

Conclusion

I grant the landlord a monetary order in the amount of **\$1,375.00**. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be enforced as an order of that Court.

I grant the landlord an order of possession **effective two (2) days** after service on the tenant. This order **must** be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia to be 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 29, 2019

Residential Tenancy Branch