



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding San Stel Investments Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FFL

Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent, loss of rent, and late fees. The landlord was represented at the hearing; however, there was no appearance on part of the tenant. The landlord's agent testified the hearing package was sent to the tenant at the manufactured home site address on January 4, 2019 and it was successfully delivered on January 7, 2019. The landlord provided the registered mail receipt, including tracking number, and print-out from Canada Post showing delivery of the registered mail, as proof of service.

I was satisfied the landlord met its obligation to put the tenant on notice of today's proceeding in manner that complies with the Act and I continued to hear from the landlord without the tenant present.

On a procedural note, the amount claimed by the landlord on the Application was specified as \$656.55 and in the details of dispute the landlord explained this is the sum of rent owed for December 2018 in the amount of \$636.55 plus \$20.00 for a late fee. In the details of dispute, the landlord also requested that unpaid rent and late fees for any subsequent months until such time an Order of Possession is issued. I found the details of the claim to be sufficiently set out that I have amended the amount of the monetary claim to be the sum of unpaid and/or loss of rent for the months of December 2018 through February 2019, plus late fees of \$20.00 per month.

Issue(s) 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, loss of rent, and late fees for the months of December 2018 through February 2019?

Background and Evidence

The tenancy started on May 31, 2016 and the rent was originally set at \$590.24 payable on the first day of every month. There have been two rent increases since the tenancy started and the rent is currently \$636.55 per month. The tenancy agreement refers to 20 pages of an addendum and in the addendum there is a provision for a late payment fee of \$20.00.

The landlord testified that the tenant's rent had been paid regularly up until December 2018 when no payment was received. On December 2, 2018 the manager posted a rent reminder on the door of the tenant's manufactured home. On December 3, 2018 the manager posted a 10 Day Notice to End tenancy for Unpaid Rent ("10 Day Notice") on the door of the tenant's manufactured home. The 10 Day Notice indicates rent of \$636.55 was outstanding as of December 1, 2018 plus a \$20.00 late fee and has a stated effective date of December 12, 2018. On December 13, 2018 the manager posted another reminder about paying rent on the door of the manufactured home. The landlord did not receive any payment of the outstanding rent and the tenant did not file to dispute the 10 Day Notice. Nor, has the tenant vacated the manufactured home site. The landlord has received no communication from the tenant and no monies have been paid since November 2018.

Analysis

Under section 20 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. I was not presented any information to suggest the tenant had a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 39(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that the tenant was required to pay rent of \$636.55 on the first day of December 2018 and he failed to do so. I also accept that the landlord posted a 10 Day Notice to the door of the tenant's manufactured home on December 3, 2018. Pursuant to section 83, the tenant is deemed to have received the 10 Day Notice three days after posting to his door. Accordingly, I find the tenant had until December 11, 2018 to either pay the outstanding rent or file to dispute the 10 Day Notice. Since he did neither, I find the tenancy ended 10 days after the 10 Day Notice was deemed received, or December 16, 2018.

I note that the stated effective date on the 10 Day Notice reads December 12, 2018; however, an incorrect effective date does not invalidate a Notice. Rather, the effective date automatically changes to comply with the Act, pursuant to section 46 of the Act.

Since the tenancy has ended and the manufactured home site is still occupied by the tenant and/or his manufactured home, I find the landlord is entitled to regain possession of the rental site and I provide the landlord with an Order of Possession effective two (2) days after service.

Based upon the unopposed evidence before me, I find the landlord entitled to recover unpaid rent for the month December 2018 plus a late fee of \$20.00. I further find the landlord entitled to recover loss of rent of \$636.55 for each of the months of January 2019 and February 2019 since the tenant's continued occupation of the site without paying any monies for occupation has caused the landlord to suffer further losses for those months. I make no award for late fees for January 2019 and February 2019 since the tenancy agreement that provides the right to charge late fees came to an end on December 16, 2018.

The landlord is also awarded recovery of the \$100.00 filing fee paid for this application.

In light of the above, the landlord is provided a Monetary Order to serve and enforce upon the tenant, calculated as follows:

Unpaid Rent: December 2018	\$ 636.55
Late fee: December 2018	20.00
Loss of Rent: January 2019	636.55
Loss of Rent: February 2019	636.55
Filing fee	<u>100.00</u>
Monetary Order	\$2,029.65

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service.

The landlord dis provided a Monetary Order in the amount of \$2,029.65 to serve and enforce upon the tenant.

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: February 08, 2019

Residential Tenancy Branch