



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding HIGHVIEW ESTATES- 2050791 ALTA LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, MNDCL, FFL

Introduction

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

- an order of possession for unpaid rent, pursuant to section 48;
- a monetary order for unpaid rent, utilities and for compensation for damage or loss under the *Act*, *Manufactured Home Park Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 60; and
- authorization to recover the filing fee for this application, pursuant to section 65.

The two tenants did not attend this hearing, which lasted approximately 29 minutes. The landlord's two agents, landlord BS ("landlord") and "landlord KL" attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that she was the manager and landlord KL was the assistant manager and that both had permission to speak on behalf of the landlord company named in this application at this hearing.

The landlord testified that the tenants were served with the landlord's application for dispute resolution hearing package on January 5, 2019, by way of registered mail to the PO Box address provided by the tenants on November 30, 2017, with the parties' written tenancy agreement. The landlord provided a Canada Post tracking number verbally and with this application. In accordance with sections 82 and 83 of the *Act*, I find that both tenants were deemed served with the landlord's application on January 10, 2019, five days after the registered mailing.

The landlord confirmed that the tenants were served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated December 5, 2018 ("10 Day Notice"), on the same date, by way of registered mail. The landlord provided a Canada Post tracking number verbally during the hearing. The effective move-out date on the notice is December 13, 2018. In

accordance with sections 81 and 83 of the *Act*, I find that the tenants were deemed served with the landlord's 10 Day Notice on December 10, 2018, five days after the registered mailing.

Pursuant to section 57(3)(c) of the *Act*, I amend the landlord's application to increase the monetary claim from \$1,160.00 to \$1,210.00 to include late fees for December 2018 and January 2019, totalling \$50.00. The landlord served the amendment to their application to the tenants with the landlord's original application on January 5, 2019, as noted above. The tenants are aware that late fees are due as per their written tenancy agreement. The tenants continue to reside in the rental unit, despite the fact that a 10 Day Notice required them to vacate earlier for failure to pay the full rent due. Therefore, the tenants knew or should have known that by failing to pay their rent on time, the landlord would pursue all unpaid rent and late fees at this hearing. For the above reasons, I find that the tenants had appropriate notice of the landlord's claim for late fees, despite the fact that they did not attend this hearing.

Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent, utilities and for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

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

Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord and landlord KL, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claims and my findings are set out below.

The landlord testified regarding the following facts. The landlord took over management of the manufactured home park ("park") in August 2018. This tenancy began on January 1, 2018. Monthly rent in the amount of \$360.00 and water utilities of \$10.00 are payable on the first day of each month. A written tenancy agreement was signed by both parties on November 30, 2017. The tenants own the manufactured home ("trailer") and rent the manufactured home site ("pad") from the landlord. The tenants continue to reside in the trailer.

The landlord seeks an order of possession against the tenants. The landlord issued the 10 Day Notice for unpaid rent of \$1,160.00 due on December 1, 2018. The landlord stated that the tenants owed rent of \$360.00 and water of \$10.00 for each month in June, August and October 2018, totalling \$1,110.00. She claimed that these amounts were still outstanding. She said that the tenants also owed late fees of \$25.00 for each month in August and October 2018, totalling

\$50.00. She maintained that the above totalled \$1,160.00. The landlord stated that further late fees of \$25.00 for each month for December 2018 and January 2019, totalling \$50.00, were also outstanding. The landlord seeks a monetary order of \$1,210.00 for unpaid rent, water utilities and late fees. The landlord also seeks to recover the \$100.00 filing fee for this application.

Analysis

The landlord provided undisputed evidence at this hearing, as the tenants did not attend. The tenants failed to pay the full rent due on December 1, 2018, within five days of being deemed to have received the 10 Day Notice. The tenants have not made an application pursuant to section 39(4) of the *Act* within five days of being deemed to have received the 10 Day Notice.

I find that the landlord did not waive its right to pursue the unpaid rent or the order of possession because the tenants paid rent after the effective date of the notice, for January and February 2019. The landlord and Landlord KL said that they verbally communicated to the tenants that they were pursuing the 10 Day Notice, the unpaid rent and the order of possession at this hearing even after the tenants paid the rent in January and February 2019. Further, the landlord did not cancel this hearing for the order of possession and the unpaid rent.

In accordance with section 39(5) of the *Act*, the failure of the tenants to take either of the above actions within five days led to the end of this tenancy on December 20, 2018, the corrected effective date on the 10 Day Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by December 20, 2018. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenants, pursuant to section 48 of the *Act*. I find that the landlord's 10 Day Notice complies with section 45 of the *Act*.

Section 20 of the *Act* requires the tenants to pay monthly rent to the landlord on the date indicated in the tenancy agreement, which in this case, is the first day of each month. Section 7(1) of the *Act* establishes that tenants who do not comply with the *Act*, *Residential Tenancy Regulation* or tenancy agreement must compensate a landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from tenants' non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The landlord provided undisputed evidence that the tenants failed to pay rent totalling \$1,080.00 and water utilities totalling \$30.00 for June, August and October 2018. The water utilities are set out as \$10.00 per month in the parties' written tenancy agreement. Accordingly, I find that the landlord is entitled to rental arrears of \$1,080.00 and water utilities of \$30.00 from the tenants.

I award the landlord \$100.00 total in late rent fees for August 2018, October 2018, December 2018, and January 2019. I find that full rent was due by the first day of each month and the parties' written tenancy agreement states that rent received late is subject to a late fee of \$25.00. The landlord provided for this \$25.00 late fee in clause 4(B) of the parties' written tenancy agreement, as required by sections 5(1)(d) and (2) of the *Regulation*.

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

Conclusion

I grant an Order of Possession to the landlord effective two (2) days after service on the tenants. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$1,310.00 against the tenants. The tenants must be served with this Order as soon as possible. Should the tenants 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: February 11, 2019

Residential Tenancy Branch