



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 sections 39 and 48.

Both parties 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 tenant confirmed receipt of the landlord's application for dispute resolution via registered mail, in accordance with section 82 of the *Act*.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent, pursuant to sections 39 and 48 of the *Act*?

Background and Evidence

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

Both parties agreed to the following facts. This tenancy began one week prior to September 1, 2017 and is currently ongoing. January 2019's rent of \$500.00 was due on January 1, 2019.

The landlord testified that on January 24, 2019 he e-mailed and posted a 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of February 6, 2019 (the "10 Day Notice") on the tenant's door. The 10 Day Notice states that the tenant failed to pay rent in the amount of \$500.00 that was due on January 1, 2019. The tenant confirmed receipt of the 10 Day Notice on January 29, 2019. The tenant denied receiving the 10 Day Notice via e-mail.

The tenant testified that she paid January 2019's rent in full via e-transfer on January 31, 2019. The tenant entered into evidence her Interac e-transfer history which shows that the tenant's e-transfer of \$500.00 was deposited on February 1, 2019. The landlord testified that he received the tenant's rent on February 1, 2019.

The landlord made no submissions on outstanding utilities.

Analysis

Section 39(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 39(4) states that if within 5 days after receiving a notice under this section, the tenant pays the overdue rent, the notice has no effect

The onus or burden of proof is on the party making the claim. When one party provides testimony of the events in one way, and the other party provides an equally probable but different explanation of the events, the party making the claim has not met the burden on a balance of probabilities and the claim fails.

I find that the landlord served the 10 Day Notice on the tenant by posting the 10 Day Notice to the tenant's door, pursuant to section 81 of the *Act*. I find that the landlord has not proved that the tenant received the 10 Day Notice sent via e-mail or that she received the 10 Day Notice posted on her door prior to January 29, 2019.

I accept the tenant's testimony that she received the 10 Day Notice on January 29, 2019. I find that the tenant paid the outstanding rent within five days of receiving the 10

Day Notice on January 29, 2019. I therefore find that the 10 Day Notice is of no force or effect, pursuant to section 39(4) of the *Act*.

I also note that had I not accepted the tenant's testimony that she received the 10 Day Notice on January 29, 2019, the deeming provisions in section 83 of the *Act* would have deemed the tenant to have received the 10 Day Notice on February 27, 2019 and the tenant would still have been found to have paid the outstanding rent within five days.

As the landlord made no submissions regarding outstanding utilities, I find that the landlord has not met the burden of proof required to prove that the tenant failed to pay utilities. I find that the 10 Day Notice is cancelled on this ground as well.

Conclusion

The 10 Day Notice is cancelled and of no force or effect.

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: March 19, 2019

Residential Tenancy Branch