



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: FFL OPRM-DR

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and utilities, pursuant to section 48;
- a monetary order for unpaid rent and utilities pursuant to section 60; and
- authorization to recover the filing fee for this application, pursuant to section 65.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:40 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord testified that the tenant was sent a copy of the dispute resolution hearing package ("Application") and evidence by way of registered mail on June 24, 2019. The landlord provided the tracking information in their evidence. In accordance with sections 81, 82, and 83 of the *Act*, I find that the tenant had been deemed served with the Application and evidence on June 29, 2019, five days after mailing. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served the 10 Day Notice dated June 3, 2019, by posting the notice on the front gate on the same date. In accordance with sections 81 and 83 of the *Act*, the 10 Day Notice was deemed served on June 6, 2019, three days after its posting.

Although the landlord applied for a monetary Order of \$899.18 in their initial claim, the tenant had paid the outstanding rent for May, June, and July 2019, for use and occupancy only. Since the filing of the original direct request proceeding, another \$449.59 in rent has become owing for August 2019 that was not included in the original application. I have accepted the landlord's request to amend their original application from \$899.18 to \$449.59 (plus \$100.00 filing fee) to reflect the rent payments and additional unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

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

Background and Evidence

This month-to-month tenancy began on January 1, 2015, with monthly pad rental currently set at \$449.59, which is payable on the first day of each month. .

The landlord issued the 10 Day Notice to the tenant on June 3, 2019 as the tenant had failed to pay the rent for May and June 2019. The landlord testified that the tenant paid the May and June 2019 outstanding rent on June 13, 2019, and the July 2019 pad rental on July 9, 2019. The landlord issued receipts for use and occupancy only. As of the hearing date the tenant has not yet paid any rent for August 2019. The tenant continues to reside at the Manufactured Home Park.

The landlord seeks a monetary order of \$449.59 for the unpaid rent for August 2019, recovery of the filing fee, as well as Order of Possession.

Analysis

Section 39 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch, or pay the overdue rent. I find that the tenant has failed to do either of these two things, by June 11, 2019, five days after the 10 Day Notice is deemed to have been received by the tenant. Accordingly, 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 10 Day Notice, June 16, 2019.

In this case, this required the tenant and anyone on the premises to vacate the premises by June 16, 2019. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 48 of the *Act*.

Section 20 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

20 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Based on the testimony of the landlord, and the supporting documents respecting matters of rent, I find that the tenant has failed to pay the outstanding rent for August 2019. I find that the landlord is entitled to the \$449.59 in unpaid rent.

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

Conclusion

I find that the landlord's 10 day Notice dated June 3, 2019 to be valid and effective as of June 16, 2019.

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.

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

I issue a \$549.59 Monetary Order in favour of the landlord, which allows the landlord to recover unpaid rent plus the filing fee for this application.

The tenant must be served with this Order as soon as possible. Should the tenant 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: August 9, 2019

Residential Tenancy Branch