



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GEBHARD PARTNERS CANADA
LP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRMDR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (“application”) seeking remedy under the *Manufactured Home Park Tenancy Act* (“Act”) by the landlord for an order of possession for unpaid site rent, for a monetary order for unpaid site rent, and to recover the cost of the filing fee.

This hearing began as an ex-parte application through the Direct Request process, and was adjourned to a participatory based on an Interim Decision dated July 16, 2019, which should be read in conjunction with this decision.

On September 12, 2019, the participatory hearing began and an agent for the landlord PC (“agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding (“Notice of Hearing”), application and documentary evidence were considered. The agent testified that the tenant was served with the Interim Decision and Notice of Adjourned Hearing by registered mail on July 16, 2019. The registered mail tracking number was submitted in evidence and has been included on the cover page of this decision for ease of reference. According to the Canada Post online registered mail tracking information the package was mailed on July 16, 2019, as claimed by the agent and was returned to the sender as “unclaimed”. Documents served by registered mail are deemed served five days after they are mailed pursuant to section 83 of the *Act*. Based on the above, I am satisfied that the tenant was deemed served as of July 21, 2019.

Preliminary and Procedural Matters

The agent requested to amend the application to include site rent owed for the months including July, August and September of 2019. The agent also stated that the tenant continues to occupy the rental site with the manufactured home. I find that the agent's request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that site rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 57(3)(c) of the *Act* from \$3,175.20 to \$4,380.60, which consists of \$401.80 in unpaid/loss of site rent for the months of July, August and September of 2019.

In addition, the agent confirmed their email address at the outset of the hearing. The agent also confirmed their understanding that the decision would be emailed to the landlord with any applicable orders for service on the tenant. As an email address was not available for the tenant, the decision will be sent to the tenant by regular mail.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled the recovery of the cost of the filing fee under the *Act*?

Background and Evidence

The tenancy agreement was submitted in evidence. The agent testified that approximately two years ago, the previous landlord passed away and the tenant inherited the manufactured home and was paying site rent until October 2018, and has not paid site rent since. The landlord also provided a Notice of Rent Increase which supports that site rent increased from \$392.00 monthly to \$401.80 as of March 1, 2019.

The agent confirmed service of the 10 Day Notice for Unpaid Rent or Utilities dated June 7, 2019 ("10 Day Notice") by personal service on the tenant. The 10 Day Notice listed \$3,375.20 owing due June 1, 2019, which included late fees. The effective vacancy date is listed as June 18, 2019. The agent stated that the tenant failed to pay site rent as follows:

MONTH SITE RENT DUE	AMOUNT OF SITE RENT DUE	AMOUNT PAID
November 2018	\$392.00	\$0.00

December 2018	\$392.00	\$0.00
January 2019	\$392.00	\$0.00
February 2019	\$392.00	\$0.00
March 2019	\$401.80	\$0.00
April 2019	\$401.80	\$0.00
May 2019	\$401.80	\$0.00
June 2019	\$401.80	\$0.00
July 2019	\$401.80	\$0.00
August 2019	\$401.80	\$0.00
September 2019	\$401.80	\$0.00
TOTAL	\$4,380.60	\$0.00

The agent confirmed that the tenant continues to occupy the rental site with their manufactured home which is in a state of disrepair. The landlord is seeking an order of possession based on the undisputed 10 Day Notice, for the unpaid site rent/loss of site rent, and the filing fee.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession – I accept the agent's undisputed testimony that the tenant has failed to pay site rent as claimed, did not dispute the 10 Day Notice, and continues to occupy the rental site with the manufactured home. As the tenant did not dispute the 10 Day Notice or pay any amount of site rent owing within 5 days of being served the 10 Day Notice on June 7, 2019, I find the tenant is conclusively presumed pursuant to section 39 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which was June 18, 2019. Accordingly, and pursuant to section 48 of the *Act*, I grant the landlord an order of possession **effective two (2) days** after service on the tenant. I find the tenancy ended on June 18, 2019 as indicated in the 10 Day Notice.

Claim for unpaid site rent/loss of site rent– I accept the agent's undisputed testimony and find that the tenant failed to pay the site rent as indicated in the table above, which totals **\$4,380.60**. Pursuant to section 20 of the *Act*, a tenant must pay site rent when it is due in accordance with the tenancy agreement.

Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that site rent is due monthly on the first of each month. The rental site continues to be occupied as a manufactured home remains on the rental site. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof for unpaid rent for the months as claimed in the table above, which totals **\$4,380.60**.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 65 of the *Act*.

Based on the above, I find the landlord has established a monetary claim of **\$4,480.60** comprised of unpaid rent, loss of rent and the filing fee.

Monetary Order – I grant the landlord a monetary order pursuant to section 60 of the *Act* in the amount of **\$4,480.60** as indicated above.

Conclusion

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia. I find the tenancy ended on June 18, 2019.

The landlord has been granted a monetary order under section 60 of the *Act* in the amount of \$4,480.60. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: September 12, 2019

Residential Tenancy Branch