



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BLUE STAR INVESTMENTS
LTD and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FFL

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") issued by the landlord, a monetary order for unpaid rent, and for recovery of the filing fee paid for this application.

This application began as an ex-parte application via the Direct Request process and was adjourned to a participatory based on the Interim Decision dated July 23, 2019, which should be read in conjunction with this decision.

At the participatory hearing, the landlord attended the teleconference hearing. The tenant did not attend the hearing. During the hearing the landlord was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application and documentary evidence was considered. The landlord testified that the tenant was served by registered mail with the Direct Request and hearing documents on July 24, 2019. The landlord submitted a copy of the Canada Post receipt showing the tracking number of the registered mail, which is reflected on the style of cause page in this Decision.

Based on the landlord's undisputed testimony and documentary evidence, I accept that the tenant was sufficiently served notice of this hearing as required by the Act.

Procedural Matters

The landlord's original direct request application was adjourned to this hearing as the original adjudicator found that there was a question as to whether the Act applied to this dispute and whether the Residential Tenancy Branch ("RTB") had jurisdiction over the dispute. As a result, the matter of jurisdiction was considered at the beginning of the hearing.

Issue(s) to be Decided

Does the Manufactured Home Park Tenancy Act apply to this dispute and do I have authority to decide the landlord's application?

If so, is the landlord entitled to an order of possession of the manufactured home site due to unpaid rent, to a monetary order for unpaid rent, and to recovery of the filing fee paid for this application?

Background and Evidence

The landlord supplied a document titled "License to Occupy" (hereafter, "License"). The License lists the landlord here as "Licensor" and lists the tenant as "Licensee". The License further grants the tenant "exclusive access to and use of the Site for the sole purpose of showing it to prospective manufactured home purchasers". Both parties signed the License via email on May 15, 2018.

The License also requires the tenant to pay an occupancy fee of \$240.00 per month for the manufactured home site, beginning June 1, 2018, that the Licensee agreed to abide by all relevant Park rules while in the park and to be responsible for any damage caused to the site or Park.

The License also provided that the Licensee may terminate the License to Occupy on one month's notice or by payment of one month's occupancy fee in lieu of notice and that the Licensor may terminate the License upon 30 days written notice to the Licensee. The License may also be terminated by mutual agreement between the Licensee and Licensor.

The landlord gave evidence that on July 3, 2019, the tenant was served with the Notice, by attaching it to the tenant's door, listing unpaid rent of \$240.00 as of July 1, 2019. The effective vacancy date listed on the Notice was July 11, 2019.

The landlord stated that the tenant has not vacated the manufactured home site, did not pay the amount listed on the Notice, and did not pay rent for the months of July, August or September, 2019. The landlord also submitted that the tenant has not paid monthly rent since December 2018, with the exception of a \$500.00 payment and as of the date of the hearing, the tenant owed \$2,035.00 in total.

The landlord's monetary claim is \$240.00, for the unpaid rent of July 2019.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

Jurisdiction-

Where there is a question of jurisdiction, the applicant bears the burden to prove the Act applies. Residential Tenancy Branch Policy Guidelines 9 and 27 provide policy statements and information with respect to jurisdiction concerning licenses to occupy. As provided in those policy guidelines, a person, or licensee is given permission to use a site or property, but that permission may be revoked at any time. Under a tenancy agreement, the tenant is given exclusive possession of the site for a term, which can include month to month. Also, if there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created.

In this case, I find that there is a presumption of a tenancy. In reaching this conclusion, the License provides exclusive access to and use of the Site to the tenant and the tenant is required to pay a monthly rent fee. Additionally, both parties are required to provide a month's or 30 day notice before ending the "occupancy", which I find complies in principle with the Act in ways a tenancy may end.

As I have found a presumption of tenancy, I find the License is in fact a tenancy agreement and that I have authority under the Act to decide this dispute.

Order of Possession of the manufactured home site and a monetary order-

Under section 20 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent, as was the case here.

The Notice is not effective earlier than 10 days after the date the tenant received it. Under section 83 of the Act, a document served by attaching it to the door is deemed received three days later. In this case, the Notice was attached to the tenant's door on July 3, 2019, and deemed received on July 6, 2019. Section 46 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the listed effective date of July 11, 2019, on the Notice, is changed to July 16, 2019.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

I have no evidence before me that the tenant applied to dispute the Notice.

I find the landlord submitted sufficient, undisputed evidence to prove that the tenant was served the Notice, did not pay any rent or file an application for dispute resolution in dispute of the Notice within five days of service. I therefore find the tenant is conclusively presumed under section 40(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, in this case, July 16, 2019.

I therefore find that the landlord is entitled to and I grant an order of possession for the manufactured home site pursuant to section 48(2) of the Act, effective two days after service of the order upon the tenant.

Should the tenant fail to vacate the manufactured home site pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

As to the landlord's monetary claim of \$240.00, the undisputed evidence of the landlord is that the tenant continues to occupy the manufactured home site. Pursuant to 4.2 of the Rules, I find an amendment to the monetary claim is appropriate as an amendment does not prejudice the respondent tenant. The tenant would be aware that rent is due pursuant to the tenancy agreement. I therefore amend the application to \$2,035.00,

which consists of total unpaid rent accumulated since December 2018 through September 2019.

I therefore find the landlord is entitled to and I grant a monetary award of \$2,035.00, for unpaid rent.

I also grant the landlord a monetary award of \$100.00 for recovery of the filing fee paid for their application.

I grant the landlord a final, legally binding monetary order pursuant to section 60 of the Act for the amount of \$2,135.00, comprised of unpaid rent and recovery of the filing fee of \$100.00.

Should the tenant fail to pay this amount to the landlord without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenant is advised that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord's application for an order of possession of the manufactured home site and a monetary order for unpaid rent and recovery of their filing fee has been granted.

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: September 20, 2019

Residential Tenancy Branch