



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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 16, 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 documents on July 16, 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.

Issue(s) to be Decided

Is the landlord entitled to an order of possession for the rental unit 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 written tenancy agreement supplied by the landlord shows that this tenancy for the manufactured home site began on March 1, 2009, and monthly pad rent payable by the tenant was \$210.00, due on the first day of the month at the beginning of the tenancy.

The landlord submitted copies of Notices of Rent Increase which shows that the monthly rent was increased to \$260.00 as of February 1, 2019. The Notices of Rent Increase were in a Memo form and addressed to several tenants in the one Memo. The Notice informing the tenants of the rent increase was in a single, two line paragraph.

The landlord gave evidence that on June 20, 2019, the tenant was served with the Notice, by registered mail, listing unpaid rent of \$270.00 as of June 15, 2019. The effective vacancy date listed on the Notice was July 1, 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.

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

Analysis

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

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 registered mail is deemed received 5 days later. In this case, the Notice was sent by registered mail on June 20, 2019, and deemed received on June 25, 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 1, 2019, on the Notice, is changed to July 5, 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 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 5, 2019.

I therefore find that the landlord is entitled to 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.

As such, I grant the landlord a final, legally binding order of possession for the manufactured home site. 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, I find the tenant owed some rent but find the landlord submitted insufficient evidence to support what amount was owed in unpaid rent. The landlord was informed the Notices of the Rent Increase were not in the approved form required by the Act and in the incorrect allowed amount, in at least one instance.

I therefore dismiss the landlord's monetary claim, with leave to reapply.

I also find the landlord is entitled to \$100.00 for recovery of the filing fee, pursuant to section 65(1) of the Act.

I grant the landlord a monetary order pursuant to section 60 of the Act for the amount owing by the tenant to the landlord in the amount of \$100.00.

Conclusion

The landlord's application for an order of possession of the manufactured home site and the filing fee has been granted.

The landlord's monetary claim for unpaid rent is dismissed, with leave to reapply.

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 10, 2019

Residential Tenancy Branch