



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0913241 BC LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

On August 16, 2019, the Landlord applied for a Direct Request proceeding seeking an Order of Possession for Unpaid Rent pursuant to Section 48 of the *Manufactured Home Park Tenancy Act* (the “Act”), seeking a Monetary Order for unpaid rent pursuant to Section 60 of the *Act*, and seeking to recover the filing fee pursuant to Section 65 of the *Act*. On August 26, 2019, this Application was set down for a participatory hearing on October 22, 2019 at 11:00 AM.

A.B. and W.L. attended the hearing as agents for the Landlord; however, the Tenant did not attend the 13-minute hearing. All in attendance provided a solemn affirmation.

A.B. advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on August 29, 2019 (the registered mail tracking number is on the first page of this decision). The tracking history indicated that the Tenant signed for this package on August 30, 2019. Based on this undisputed testimony and the registered mail tracking history, in accordance with Sections 82 and 83 of the *Act*, I am satisfied that the Tenant was served the Landlord’s Notice of Hearing and evidence package.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

A.B. stated that the tenancy started with a prior owner and a copy of the tenancy agreement was not provided; however, the tenancy started on or around May 30, 2012. Rent was currently established at \$277.00 per month, due on the first day of each month.

She advised that the Tenant has been in arrears for rent over the past year and he states that he is between jobs as a reason that rent has not been paid. He constantly makes promises to pay but he does not follow through. She stated that the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") was served to the Tenant by posting it to his door on July 11, 2019. A copy of a proof of service was submitted as documentary evidence. The Notice indicated that \$2,204.00 was outstanding on July 1, 2019 and that the effective end date of the tenancy was July 21, 2019.

She stated that the Tenant paid \$200.00 on July 30, 2019 and an additional \$300.00 on August 26, 2019. She advised that the Landlord is seeking a monetary award in the amount of **\$2,610.00** for rent arrears prior to service of the Notice, in addition to the remaining arrears of July, August, September, and October 2019 rent.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 45 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 45.

Section 20 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 39 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted

that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on July 14, 2019. According to Section 39(4) of the *Act*, the Tenant has 5 days to pay the overdue rent or to dispute this Notice. Section 39(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the fifth day fell on Friday July 19, 2019, the Tenant must have paid the rent in full or disputed the Notice by this date at the latest. The undisputed evidence is that the Tenant did not pay the rent or make an Application to dispute the Notice. There is no evidence before me that permitted the Tenant to withhold the rent.

As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant being deemed to have received the Notice. Moreover, the Tenant did not have a valid reason for withholding the rent pursuant to the *Act*. In addition, the Tenant did not dispute the Notice. Ultimately, I am satisfied that the Tenant is conclusively presumed to have accepted the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 81 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 45 and 48 of the *Act*.

I also find that the Landlord is entitled to a monetary award, and I grant the Landlord a monetary award in the amount of **\$2,610.00**, which is comprised of rent arrears and rent owed from the months of July, August, September, and October 2019.

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

Pursuant to Sections 60 and 65 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Rent arrears including October 2019 rent	\$2,610.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$2,710.00

Conclusion

Based on the above, I grant an Order of Possession to the Landlord **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.

The Landlord is provided with a Monetary Order in the amount of **\$2,710.00** in the above terms, and 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: October 22, 2019

Residential Tenancy Branch