



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LADHA ENTERPRISES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

On August 20, 2019, the Landlord applied for a Dispute Resolution 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 28, 2019, this Application was set down for a participatory hearing on October 24, 2019 at 9:30 AM.

D.E. and C.C. attended the hearing as agents for the Landlord; however, the Tenants did not attend the 24-minute hearing. All in attendance provided a solemn affirmation.

D.E. advised that a Notice of Hearing and evidence package for each Tenant was served to Tenant G.L. by hand on August 30, 2019 and C.C. testified that she witnessed this service. Based on this undisputed, solemnly affirmed testimony, and in accordance with Sections 82 and 83 of the *Act*, I am satisfied that the Tenants were served the Landlord’s Notice of Hearing and evidence packages.

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.

D.E. stated that the tenancy started on September 24, 2018. Rent was currently established at \$500.00 per month, due on the first day of each month. There was no written tenancy agreement created by the Landlord.

She advised that the Tenants have been in arrears for rent since March 2019 and have still not paid rent up until the date of the hearing. She stated that the 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") was served to the Tenants by posting it to their door on July 29, 2019 and this service was witnessed by her husband. A copy of the Notice was submitted as documentary evidence. The Notice indicated that \$2,500.00 was outstanding on July 1, 2019 and that the effective end date of the tenancy was August 8, 2019.

She stated that the RV that the Tenants occupy is for residential use, not recreational use, and they get their mail sent to the park. She advised that the site rented to the Tenants is part of the registered manufactured home park, that the park meets the zoning requirements of the local municipality, that the Tenants owe rent monthly where GST is not charged, that the Tenants have access to services such as frost free connections and sewer or waste disposal, and that there are no visiting hours that are imposed.

She advised that the Landlord is seeking a monetary award in the amount of **\$4,000.00** for rent arrears for the months of March, April, May, June, July, August, September, and October 2019.

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.

In considering D.E.'s testimony with respect to the site, I am satisfied that this rental falls under the *Manufactured Home Park Tenancy Act* and is not a licence to occupy. As a result, I have jurisdiction to render a decision over this matter.

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 Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Should the Tenants 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 Tenants would have five days to pay the rent in full or to dispute the Notice. If the Tenants do not do either, the Tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenants must vacate the rental unit.

The undisputed evidence before me is that the Tenants were deemed to have received the Notice on August 1, 2019. According to Section 39(4) of the *Act*, the Tenants have 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 Tuesday August 6, 2019, the Tenants must have paid the rent in full or disputed the Notice by this date at the latest. The undisputed evidence is that the Tenants did not pay the rent or make an Application to dispute the Notice. There is no evidence before me that permitted the Tenants 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 Tenants being deemed to have received the Notice. Moreover, the Tenants did not have a valid reason for withholding the rent pursuant to the *Act*. In addition, the Tenants did not dispute the Notice. Ultimately, I am satisfied that the Tenants are 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 Tenants have 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 **\$4,000.00**, which is comprised of rent arrears for the months of March, April, May, June, 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 up to and including October 2019 rent	\$4,000.00
Filing fee	\$100.00
TOTAL MONETARY AWARD	\$4,100.00

Conclusion

Based on the above, I grant an Order of Possession to the Landlord **two days after service of this Order** on the Tenants. Should the Tenants 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 **\$4,100.00** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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 24, 2019

Residential Tenancy Branch