



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KENDELL ACRES LTD and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL

Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 48(4) of the *Manufactured Home Park Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a Monetary Order.

The landlord submitted two signed Proofs of Service of the Notices of Direct Request Proceeding which declare that on December 21, 2019, the landlord personally served each of the tenants the Notice of Direct Request Proceeding. The landlord had the tenants and a witness sign the Proofs of Service of the Notices of Direct Request Proceeding to confirm personal service. Based on the written submissions of the landlord and in accordance with section 82 of the *Act*, I find that the tenants have been duly served with the Direct Request Proceeding documents on December 21, 2019.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 39 and 48 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 60 of the *Act*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 65 of the *Act*?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlord submitted the following relevant evidentiary material:

- A copy of a manufactured home park tenancy agreement which was signed by the tenants on October 26, 2006, indicating a monthly rent of \$230.00, due on the first day of each month for a tenancy commencing on January 1, 2001;
- A copy of two Notice of Rent Increase forms showing the rent being increased from \$310.00 to the rent amount of \$328.00;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated December 9, 2019, for \$696.00 in unpaid rent. The 10 Day Notice provides that the tenants had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of December 19, 2019;
- A copy of a witnessed Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was personally served to the tenants at 5:00 pm on December 9, 2019; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

Analysis

I have reviewed all documentary evidence and in accordance with section 81 of the *Act*, I find that the tenants were duly served with the 10 Day Notice on December 9, 2019.

I accept the evidence before me that the tenants have failed to pay the rent owed in full within the five days granted under section 39(4) of the *Act* and did not dispute the 10 Day Notice within that five-day period.

Based on the foregoing, I find that the tenants are conclusively presumed under section 39(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, December 19, 2019.

Therefore, I find that the landlord is entitled to an Order of Possession for unpaid rent as of December 17, 2019.

Part 4, section 35 of the *Act* establishes that “a landlord must not increase rent except in accordance with this Part.”

Part 4, section 35(2) of the *Act* establishes that the landlord “must give a tenant notice of a rent increase at least 3 months before the effective date of the increase”, and section 35(3) of the *Act* states that “A notice of a rent increase must be in the approved form.”

I find that the landlord submitted a copy of two Notices of Rent Increase showing the rent being adjusted from \$310.00 to \$328.00. However, the landlord has not submitted any Notice of Rent Increase forms to show the increases from the \$230.00 established in the tenancy agreement to the \$310.00 that appears in the first Notice of Rent Increase form.

Furthermore, I find that the two Notice of Rent Increase forms the landlord has submitted are not signed or dated by the landlord. Therefore, I find I am not able to determine whether the landlord provided the full three months' notice as required under section 35(2) of the *Act*.

For these reasons, the landlord's application for a Monetary Order for unpaid rent is dismissed with leave to reapply.

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

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 65 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. The landlord is provided with this Order in the above terms and the tenant(s) must be served with **this Order** as soon as possible. Should the tenant(s) 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.

I dismiss the landlord's application for a Monetary Order for unpaid rent 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: December 30, 2019

Residential Tenancy Branch