



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FFL

Introduction

This participatory hearing was scheduled for 9:30 a.m. on this date, via teleconference call, as ordered by an Adjudicator on November 12, 2019 in response to the landlord's Application for Dispute Resolution for an Order of Possession and Monetary Order for unpaid rent under the Direct Request procedure. Only the landlord was represented at the hearing and there was no appearance on part of the tenants despite leaving the teleconference call open for approximately 45 minutes.

Since the tenants did not appear for the hearing, I explored service of the hearing documents upon the tenants. The landlord's representative testified that he sent the hearing documents to each tenant via registered mail on November 21, 2019 at the rental unit address. The landlord's representative confirmed that the tenants were residing in the rental unit at the time of mailing, but the registered mail packages were returned because they were not picked up by the tenants. The landlord provided the registered mail tracking numbers as proof of service, which I have recorded on the cover page of this decision.

Section 90 of the Act deems a party to be in receipt of documents mailed to them five days after mailing, even if the person refuses to accept or pick up their mail. Pursuant to section 90 of the Act, I found the tenants were deemed to be in receipt of notification of this proceeding and I continued to hear from the landlord without the tenants present.

Preliminary and Procedural Matters

1. Naming of landlord

As noted in the Interim Decision issued by the Adjudicator on November 12, 2019 the name of the applicant landlord is different than the name of the landlord on the tenancy agreement. I made enquiries of the applicant and heard that the rental unit, a manufactured home situated in a manufactured home park, is owned by the applicant's father (referred to by initials LW). LW had entered into the tenancy

agreement with the tenants and then moved to another country and appointed his son, the applicant referred to by initials JW, to act as his agent with respect to the rental unit and the tenancy matters.

Section 1 of the Act defines "landlord" to include:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
 - (i) permits occupation of the rental unit under a tenancy agreement, or
 - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;

In the circumstances before me, I find LW is a "landlord" as he is the owner of the rental unit and I am satisfied that his son, JW, is acting on behalf of or as agent for the owner in exercising the powers under the Act and tenancy agreement. Therefore, I am satisfied that both LW and JW meet the definition of "landlord" under the Act and naming JW as landlord in the style of cause is correct in the circumstances presented to me.

2. Applicable statute

In filing this Application for Dispute Resolution, JW had identified the *Manufactured Home Park Tenancy Act* (MHPTA) as the statute that applies to this tenancy agreement and rental unit; however, I determined that it is the *Residential Tenancy Act* (RTA) that applies, and I amended the Application for Dispute Resolution accordingly.

I make this determination based on JW's testimony that LW is the owner of the manufactured home occupied by the tenants and LW is a tenant of the manufactured home park.

The MHPTA applies where the landlord owns the manufactured home park and rents only a site to a tenant and the tenant owns the manufactured home; whereas, the RTA applies where the landlord rents a manufactured home to a tenant.

3. Amendment of monetary claim

The landlord requested the monetary claim be amended to reflect unpaid and/or loss of rent loss of rent for November 2019, December 2019 and January 2020 since the tenants have continued to occupy the rental unit and have not paid anything for their continues use and occupancy.

Rule 4.2 of the Rules of Procedure provides as follows:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

Having heard the tenants have remained in possession of the rental unit and have not paid any rent or monies for use and occupancy since October 2019, I find the landlord's request to amend the monetary claim to reflect additional loss of rent to be reasonably foreseeable and anticipated and I permitted the amendment.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent, and if so, how much is the landlord entitled to recover?

Background and Evidence

A written tenancy agreement was executed on June 1, 2019 for a fixed term tenancy set to commence on June 1, 2019 and expire on November 29, 2019. The tenancy agreement signed by the tenants was presented as evidence for this proceeding.

The tenancy agreement indicates the following terms, in part:

- The monthly rent was set at \$1,150.00 payable on or before the first day of every month.
- A security deposit of \$1,150.00 was required; however, the landlord's agent stated that he believes the tenants only paid \$550.00 to LW for the security deposit.
- The landlord would pay for utilities, including: water and sewer electricity, garbage removal, gas and oil.

On October 6, 2019 JW served a *10 Day Notice to End Tenancy for Unpaid Rent and Utilities* ("10 Day Notice") upon the tenants by posting it to the doors of the rental unit on October 6, 2019 in the presence of a witness. A copy of the 10 Day Notice and a signed Proof of Service was presented as evidence.

The 10 Day Notice indicates the tenants failed to pay rent of \$1,100.00 on October 6, 2019 and did not pay utilities of \$299.61 that were demanded in writing on October 6, 2019.

JW testified that the tenant paid \$860.00 on October 12, 2019, leaving \$240.00 outstanding for October 2019 and have not paid anything else since then.

As for the utilities component of the 10 Day Notice, JW explained that it reflects an amount to bring the "hydro" account current before the hydro account was to be transferred to the tenant's name. The landlord did not present a copy of a written demand for payment of utilities or a copy of the utility bill. Nor,

did the landlord indicate that this charge is separate from the “water and sewer electricity” that was to be paid by the landlord under the terms of tenancy. Under section 46 of the Act, a landlord must demand payment for utilities, in writing, at least 30 days before the unpaid utilities may be a basis for ending the tenancy. Accordingly, I was not satisfied the landlord was in a position to end the tenancy for unpaid utilities when the 10 Day Notice was issued, and I have only considered the issue of unpaid and/or loss of rent from this point further.

The landlord seeks an Order of Possession effective as soon as possible. The landlord seeks to recover unpaid rent of \$240.00 still owing for October 2019 plus loss of rent for the months of November 2019, December 2019 and January 2020.

Analysis

Under section 26 of the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement, even if the landlord has violated the Act, regulations or tenancy agreement, unless the tenant has a legal right to withhold rent. I was not provided any evidence to suggest the tenants had a legal right to withhold rent.

Where a tenant does not pay rent the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent. A tenant who receives a 10 Day Notice has five days to pay the outstanding rent to nullify the 10 Day Notice or the tenant has five days to dispute the 10 Day Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the 10 Day Notice within five days then, pursuant to section 46(5) of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the 10 Day Notice.

I accept the unopposed evidence before me that the tenants were required to pay rent of \$1,150.00 on the first day of every month and the tenants failed to do so for the month of October 2019 onwards. I also accept that the landlord served a 10 Day Notice upon the tenant by posting it on the door of the rental unit on October 6, 2019. Pursuant to section 90 of the Act, the tenants are deemed to have received the 10 Day Notice three days after posting, or October 9, 2019. Accordingly, I find the tenants had until October 14, 2019 to either: pay all of the outstanding rent or file to dispute the 10 Day Notice. The tenants only made a partial payment of \$860.00 on October 12, 2019, leaving a balance of outstanding rent of \$240.00. Since the tenants did not pay all of the outstanding rent and did not file to dispute the 10 Day Notice by October 14, 2019, I find the tenancy ended on October 19, 2019 and the landlord is entitled to regain possession of the rental unit. With this decision, I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants.

Based upon the unopposed evidence before me, I find the landlord entitled to recover from the tenants the unpaid rent of \$240.00 for the month of October 2019. I further find the tenants have violated the Act in a number of ways, including failure to vacate the rental unit when the tenancy ended, and their actions have caused the landlord to suffer further losses. Considering the date of this decision, I award the landlord loss of rent for the month of November 2019 in the amount of \$1,150.00; \$1,150.00 for the month of December 2019; and, loss of rent for the first half of January 2020 in the amount of \$575.00.

Should the landlord suffer further loss of rent for the period after January 15, 2020 due to the actions or lack of action by the tenants that violate the Act the landlord may make another Application for Dispute Resolution seeking further damages or loss from the tenants.

Given the landlord's success in this proceeding, I further award the landlord recovery of the \$100.00 filing fee.

I do not make any award or authorization with respect to the security deposit since the landlord's agent was not entirely certain as to the exact amount paid by the tenants for the security deposit. Accordingly, the security deposit remains in trust for the tenants, to be administered in accordance with section 38 of the Act. The parties are encouraged to familiarize themselves with section 38 of the Act so as to comply with their respective obligations with respect to the disposition of the security deposit.

In keeping with all of my findings and awards above, I provide the landlord with a Monetary Order to serve and enforce upon the tenants, calculated as follows:

Unpaid rent: October 2019	\$ 240.00
Loss of rent: November 2019	1,150.00
Loss of rent: December 2019	1,150.00
Loss of rent: January 1 -15, 2020	575.00
Filing fee	<u>100.00</u>
Monetary Order for landlord	\$3,215.00

Conclusion

The landlord is provided an Order of Possession effective two (2) days after service upon the tenants.

The landlord is provided a Monetary Order in the sum of \$3,215.00 to serve and enforce upon the tenants.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: January 07, 2020

Residential Tenancy Branch