



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, FFL

Introduction

The hearing dealt with an application by the landlord pursuant to the *Manufactured Home Park Tenancy Act*. (the *Act*) for:

- an order of possession for unpaid pad rent pursuant to sections 39 and 48 of the *Act*;
- authorization to recover the filing fee for this application pursuant to section 65(1) of the *Act*.

The landlord KW and Property Manager SH attended the hearing via conference call. The landlord and Property Manager were given a full opportunity to be heard, to present sworn testimony and to make submissions. The tenant did not attend this hearing.

The landlord testified the tenant was served the Notice of Dispute Resolution together with the evidentiary package via Canada Post registered mail on February 24, 2020.

I find that this satisfied the service requirements set out in sections 81 and 82 of the *Act*, and find the tenant was deemed to have received the documents in accordance with the *Act* on February 29, 2020. Canada post tracking number is listed on the first page of this decision.

Rule of Procedure 7.3 states:

7.3 Consequences of not attending the hearing

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply. I proceeded with the hearing.

In the 10 Day Notice dated January 7, 2020 the landlord was seeking the sum of \$3,113.00 for pad rent owed for the months from June 2019 to January 2020. The landlord sought to increase the monetary claim to include the pad rent for February and March 2020.

Amendment

The Residential Tenancy Branch rules of procedure rule 4.2 states

4.2 Amending an application at the hearing in circumstances that can reasonably be anticipated, such as when the amount of pad 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.

In this case, the landlord is seeking compensation for unpaid pad rent that has increased since he first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenant. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include the rent for February and March 2020.

Amendment

At the outset of the hearing, the landlord confirmed that he had erroneously indicated this application is being made under the Residential Tenancy Act on the initial application for dispute resolution.

Pursuant to my power to amend an application under section 57(3) of the *Act*, I amend the landlord's application for dispute resolution to make this application under the appropriate *Act*. The *Manufactured Home Park Tenancy Act*.

Issue(s) to be Decided

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

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

Background and Evidence

This tenancy began in 2015. The landlord submitted that they took over the Trailer park in 2015 and did not submit a copy of the tenancy agreement in evidence. The landlord testified that monthly pad rent in the amount of \$615.00 is payable on the first day of each month.

The landlord testified the tenant has not paid the full pad rent for the months from June 2019 to date and that the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), dated January 7, 2020 by serving a copy personally on the tenant and that this service was witnessed by a third party.

The landlord provided a Proof of Service document signed by the landlord and their witness.

The Notice indicates an effective move-out date of January 17, 2020.

The grounds to end the tenancy cited in the Notice were:

- 1) the tenant owes the sum of \$3,113.00 pad rent for the months of June 2019 to January 2020.

The Property Manager testified that the tenant was making partial payments of pad rent but the rest has accumulated as arrears dating back to June 2019.

The tenant did not attend the hearing to present any submissions in relation to the Notice and the tenant did not upload any evidence disputing the landlord's Notice.

Analysis

I have reviewed the documentary evidence and in accordance with sections 81 and 83 of the *Act*, I find that the tenant was served with the 10 Day Notice on January 7, 2020 with an effective date of January 17, 2020.

Section 39 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 39(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

Section 39(5) says 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.

I accept the evidence before me that the tenant has failed to pay the pad 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 the five-day period. Therefore, I find that the landlord is entitled to an Order of Possession for unpaid pad rent.

I accept the landlord's evidence that the rent remains in arrears. Pursuant to sections 60 of the *Act*, I order that the tenant pay the landlord \$4,343.00 representing the pad rent owed from June 2019 to March 2020.

As the landlord has been successful in this application, I grant the landlord a monetary award of \$100.00 for reimbursement of the filing fee pursuant to section 65 of the *Act*.

Conclusion

I grant a monetary order for the sum of \$4,443.00 for the unpaid rent and \$100.00 filing fee pursuant to section 60 and 65 of the *Act*.

I grant an Order of Possession to the landlord effective 7 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.

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 Tenancy Act*.

Dated: April 16, 2020

Residential Tenancy Branch