



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, FFL

This hearing dealt with an Application for Dispute Resolution by way of Direct Request Proceeding (the “Application”) that was filed by the Landlord under the Manufactured Home Park Tenancy Act (the “Act”), seeking a Monetary Order for unpaid rent, an Order of Possession for the mobile home site, and recovery of the filing fee. The matter was set to be heard as a participatory hearing at 9:30 AM on March 2, 2020.

The hearing was convened by telephone conference call and was attended by the owner of the mobile home park (the “Landlord”), two agents for the Landlord (the “Agents”) and both Tenants listed on the Application. All parties provided affirmed testimony. The parties were given the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns about the service or receipt of the Notice of Dispute Resolution Package, the Notice of Hearing, or the documentary evidence before me for consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the email addresses provided by them in the hearing.

Preliminary Matters

Matter # 1

At the outset of the hearing I identified inconsistencies in the business name for the Landlord and the parties named in the Application as the tenants. The Owner of the holding company that owns the mobile home park was present and provided me with the correct business name for the Landlord. Although D.A. was listed as a Tenant on

the Landlord's Application, they are not listed as a Tenant on the tenancy agreement in the documentary evidence before me; however, all parties agreed that D.A. resides in the rental unit as a tenant. Based on this information and the fact that the Landlord named D.A. as a Tenant in the Application, I have considered them a Tenant for the purpose of the *Act*.

Matter #2

The parties agreed that since the filing of this Application, all outstanding rent has been paid. As a result, the Landlord reduced their monetary claim to recovery of the \$100.00 filing fee.

Matter #3

Although the Landlord submitted several additional 10 Day Notices to End Tenancy for Unpaid Rent or Utilities and a One Month Notice to End Tenancy for Cause, I advised them that pursuant to rule 6.2 of the Rules of Procedure, the hearing is limited to the matters claimed on the application unless the arbitrator allows a party to amend the application. No Amendment to the Application for Dispute Resolution was served on the Tenants or submitted to the Branch seeking to add the other 10 Day Notices or the One Month Notice to the Application and I do not find that this is a situation under which it would be appropriate to amend the Application in the hearing pursuant to rule 4.2 of the Rules of Procedure. As a result, I declined to amend the Application in the hearing and the hearing proceeded based on the Landlord's Application for Order of Possession for the mobile home site pursuant to the 10 Day Notice dated November 5, 2019, and recovery of the filing fee.

Matter #4

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

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

Background and Evidence

The Tenancy agreement in the documentary evidence before me states that the month-to-month tenancy began on December 1, 2016, and that at that time, pad rent in the amount of \$287.00 was due on the first day of each month. The Landlord and agents stated that as of September 1, 2019, pad rent was \$429.00. In support of this testimony the Landlord provided a copy of a Notice of Rent Increase, which they stated was posted to the door of the Tenants mobile home on May 30, 2019, without a witness present. Although the Tenants acknowledged that the Landlord has been good at serving Notices of Rent Increase in the past, they stated that they did not recall receiving this Notice of Rent Increase and that they believed, at the time the 10 Day Notice was served, that the rent was still only \$419.00.

The Landlord and Agents stated that the timely payment of rent has been an ongoing issue for the Tenants and that when the Tenants did not pay \$338.00 in outstanding rent from October 2019 as well as the \$429.00 due for November 2019 on November 1, 2019, the 10 Day Notice was served.

The 10 Day Notice in the documentary evidence before me, dated November 5, 2019, states that as of November 1, 2019, \$767.00 in outstanding rent was owed. It also states that the effective date of the 10 Day Notice is November 15, 2019, and that it was posted to the door of the Tenants' mobile home on November 3, 2019.

In the hearing the Landlord stated that the 10 Day Notice was posted by them on November 3, 2019, in the presence of the agent P.D. As the agent P.D. was also present in the hearing, they confirmed the accuracy of this testimony. Although the 10 Day Notice is signed and dated November 5, 2019, the Landlord and Agents stated that was simply a clerical error and should have said November 3, 2019.

The Tenants stated that they both have health concerns and are not sure if or when they received a copy of the 10 Day Notice but did not dispute that some amount of rent was owed in both October and November of 2019. The Tenants stated that they receive funding from a government agency and that they approached this agency in December of 2019, to resolve this issue. The Tenants stated that they thought this issue had been resolved as all outstanding rent has now been paid and their rent is being paid in full each month to the Landlord by the government agency.

The Landlord and Agents acknowledged that the Tenants paid \$650.00 towards the outstanding rent on November 25, 2019, and that as of today's date, no amount of rent is outstanding. However, the Landlord stated that they are still seeking to enforce the 10 Day Notice as the Tenants did not file an Application seeking to dispute the 10 Day Notice or pay the full amount owed with 5 days of being served with the 10 Day Notice, that late payment of rent has been an ongoing issue, and that there are other issues with the Tenants and the tenancy. Although the effective date of the 10 Day Notice, November 15, 2019, has passed, the Landlord acknowledged the complexities involved with ending a Manufactured Home Park tenancy and as a result, they are seeking an Order of Possession for the mobile home site for May 1, 2020.

Analysis

Section 39 (1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

Landlord's notice: non-payment of rent

39 (1) 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.

However, section 39 (4) and 39 (5) of the *Act* also state:

39 (4) Within 5 days after receiving a notice under this section, the tenant may

(a) pay the overdue rent, in which case the notice has no effect, or

(b) dispute the notice by making an application for dispute resolution.

(5) 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

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 81 and 83 of the *Act*, I find that the Tenants were deemed served with the 10 Day Notice on November 6, 2019, three days after it was attached to the door of their mobile home. I also find that the 10 Day Notice complies with section 45 of the *Act* as it is signed and dated by the Landlord, gives the address for the manufactured home site, states the effective date of the notice and the grounds for ending the tenancy, and is in the approved form.

Given the deemed service date of 10 Day Notice, November 6, 2019, I find that the effective date of the 10 Day Notice, November 15, 2019, no longer complies with the minimum notice period stated in section 39 (1) of the *Act* and I therefore correct it to November 16, 2019, pursuant to section 46 of the *Act*.

Although the parties disagreed about the exact amount of rent owed each month and whether the amount of rent owed according to the 10 Day Notice was correct; I am satisfied based on the testimony of both parties that as of November 1, 2019, some rent was owed for October 2019 and that rent of *at least* \$419.00 was due on or before November 1, 2019. Although the Tenants acknowledge paying \$650.00 on November 25, 2019, towards November rent and the past-due balance owing for October 2019, there is no evidence before me that, within 5 days of being deemed served with the 10 Day Notice, they either filled an Application seeking to dispute the 10 Day Notice or paid any amount towards the rent owed for November.

Based on the above, I find that the Tenants are conclusively presumed, pursuant to section 39 (5) of the *Act*, to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice and were therefore required to vacate the mobile home site by November 16, 2019. As the corrected effective date of the 10 Day Notice has passed, the Landlords are therefore entitled to an Order of Possession for the mobile home site. At the Landlord's request, the Order of Possession will be effective at **1:00 P.M. on May 1, 2020.**

As the Landlord was successful in their Application and pursuant to sections 60 and 65 of the *Act*, I find that the Landlord is entitled to a Monetary Order in the amount of \$100.00 for recovery of the \$100.00 filing fee.

Conclusion

Pursuant to section 48 of the *Act*, I grant an Order of Possession to the Landlord effective at **1:00 P.M. on May 1, 2020**. The Landlord is provided with this Order 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to sections 60 and 65 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$100.00. The Landlord is provided with this Order 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 *Residential Tenancy Act*.

Dated: March 4, 2020

Residential Tenancy Branch