



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1081687 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM, FFL

Introduction

The landlords filed an Application for Dispute Resolution (the “Application”) on January 2, 2020 seeking an Order of Possession for the manufactured home site, as well as a recovery of the filing fee for the hearing process. The matter proceeded by way of a hearing pursuant to section 67(2) of the *Manufactured Home Park Tenancy Act* (the “Act”) on March 2, 2020.

In the conference call hearing, I explained the process and offered each party the opportunity to ask questions. The landlords and one of the respondent tenants attended the hearing and each was provided with the opportunity to present oral testimony and make submissions during the hearing.

The present tenant confirmed receipt of the Notice of Dispute Resolution that the landlords sent by priority post on December 30, 2019. The tenant stated the co-tenant received this document, though did not let him know about this hearing until one day prior to the scheduled hearing date. The co-tenant did not attend the hearing. The tenant confirmed that he did not know about this conference call hearing and stated that he was able to speak to the issues at hand in this review.

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 before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlords applied for an order of possession pursuant to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) they gave to the tenant on December 10, 2019, and a monetary order for the amount of \$384.30 that represents unpaid rent for the month of December 2019.

The landlords submitted that the tenancy agreement, as it stands, is not documented in a single document with that pertinent information. This is due to their purchase of the manufactured home park on December 1, 2019. One piece of documentary evidence submitted by the landlords states: “We purchased the modular home park on Dec 1, 2019. The previous owner did not have a written tenancy agreement with the tenant.” The landlords also testified that on their purchase of the park, they began to introduce themselves around the park as the new owners and this is how they came to know the tenant, as the resident in the disputed manufactured home site.

The tenant confirmed that there was an oral tenancy agreement in place with the previous landlord, and the tenancy began in 2015. The tenant also confirmed the rent amount of \$384.30 was the current amount, and this was payable on the first day of each month.

The landlords gave a timeline of the matter that led to their serving the 10 Day Notice on December 10, 2019. This involved the co-tenant who was not present at the hearing. At the beginning of December 2019, the co-tenant made complaints about sewage backup, and on looking into the issue the landlords determined that heavy equipment was necessary. This led the co-tenant to announce that there would be no payment of rent. There was no payment of the rent amount that was due on December 1, 2019.

The landlords served the 10 Day Notice on December 10, 2019 for this lack of payment. On December 18, 2019, there was an e-transfer for the rental amount that was

cancelled immediately thereafter. The landlords provided documentary evidence that shows this cancelled transaction. The landlords also testified that they received cheques, and when they attempted to deposit the cheques, the result was “insufficient funds”.

There was no payment of rent for the months of January and February 2020. On March 1, 2020 they received an image via text message that there was a monetary order being sent in the amount of \$1,540.00. At the time of the hearing, the landlords had not received this monetary order.

In the hearing, the tenant confirmed the landlords’ testimony that the cheques returned ‘insufficient funds’ and apologized for that. The tenant apologized “that everything worked out this way” and pledged to manage the situation better and make sure the rent is paid on time. The landlords nonetheless wished to pursue the Order of Possession for the manufactured home site.

Analysis

Conjoining the evidence of the two parties in this hearing, I am satisfied that the terms of the tenancy agreement regarding payment of pad rent were clear to the tenant at the time the landlords took ownership of the park on December 1, 2019.

I have reviewed all documentary evidence 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 December 13, 2019, three days after the landlords placed it in the tenants’ mailbox.

I accept the evidence before me that the tenants have failed to pay the rent owed in full by December 18, 2019, within five days granted under section 39(4) of the *Act* and did not dispute the 10 Day Notice within that five-day period. The tenant confirmed in the hearing that he did not dispute the 10 Day Notice within five days after deemed service and that payments in the form of cheques were not completed because of insufficient funds.

Based on the foregoing, I find that the tenant is conclusively presumed under sections 39(5) of the *Act* to have accepted that the tenancy ended on December 18, 2019. I find delayed payments in the form of e-transfers and cheques written beyond the five-day period do not cancel or nullify the conclusive presumption.

I find the tenants were obligated to pay \$384.30, as per the agreed terms of the tenancy.

I find the landlords are entitled to an Order of Possession as well as the unpaid rent amount of \$384.30. As the landlords are successful in this application, I find the landlords are entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

Under section 48(3) of the *Act*, I grant an Order of Possession for the rental site effective March 31, 2020. 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.

Pursuant to sections 60 and 65 of the *Act*, I grant the landlord a Monetary Order in the amount of \$484.30, for rent owed for December 2019 and recovery of the filing fee for this hearing application. 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 tenant 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: March 11, 2020

Residential Tenancy Branch