



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NOORT INVESTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FFL, OPR, OPE, MNRL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on February 13, 2020 (the "Application"). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 04, 2019 (the "Notice");
- For an Order of Possession based on a One Month Notice;
- To recover unpaid rent; and
- For reimbursement for the filing fee.

The Agent for the Landlord appeared at the hearing. Nobody appeared at the hearing for the estate of Tenant L.H. I explained the hearing process to the Agent who did not have questions when asked. The Agent provided affirmed testimony.

Preliminary Issue – Naming of Parties

The original Application named the Landlord as applicant and both the estate of Tenant L.H. and S.V. as respondents.

The Agent filed an amendment changing the landlord name to her name and removing the estate of Tenant L.H. as a respondent.

The Landlord submitted a written tenancy agreement between the Landlord and Tenant L.H.

At the hearing, the Agent advised that she is the park manager. The Agent confirmed the Landlord owns the site. Given this, I amended the Application again to include the Landlord's name rather than the Agent's name. This is reflected in the style of cause.

The Agent advised that Tenant L.H. passed away in December of 2018.

The Agent testified as follows in relation to S.V. This is Tenant L.H.'s daughter. She is Tenant L.H.'s agent and beneficiary. S.V. told the Agent the home is now hers. S.V. paid rent. S.V. would tell the Agent that she had to get money from the trustee. She is the only heir to the estate of Tenant L.H. She lived at the home from January of 2019 to the end of 2019. She was also at the home recently.

Section 1 of the *Manufactured Home Park Tenancy Act* (the "Act") includes the definition of "tenant" and states:

"tenant" includes

(a) the estate of a deceased tenant...

Policy Guideline 43 is about naming parties and states:

D. NAMING AN ESTATE OF A PERSON WHO HAS DIED

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate must be named. If the deceased is a respondent to an application, the personal representative must be named and served. If the applicant does not know the name of the deceased's personal representative at the time of filing an Application for Dispute Resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.

The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.

The proper manner of naming the estate is as follows: John Smith, Personal Representative of the Estate of Mary Jones, Deceased.

I am not satisfied based on the testimony of the Agent that S.V. is the personal representative of Tenant L.H.'s estate. I do not find the Agent's testimony compelling evidence that S.V. is the personal representative. There is no documentation before me showing S.V. is the personal representative. I have therefore removed S.V. as a respondent and amended the Application to name the estate of Tenant L.H.

Preliminary Issue – Service

The Landlord submitted evidence prior to the hearing. Nobody submitted evidence for the estate of Tenant L.H. I addressed service of the hearing package and Landlord's evidence.

The Agent testified that the hearing package, amendment and evidence were sent to the site by registered mail on February 25, 2020. The Landlord had submitted documentation with Tracking Number 1 on it in relation to the package. I looked Tracking Number 1 up on the Canada Post website which shows a notice card in relation to the package was left February 26, 2020. It shows the package was unclaimed and returned to the sender.

Based on the undisputed testimony of the Agent, documentation provided and Canada Post website information, I am satisfied pursuant to section 64(2) of the *Act* that the estate of Tenant L.H. was sufficiently served with the hearing package, amendment and evidence. I find this considering section 82(1)(c) of the *Act*. I am satisfied the Landlord was permitted to serve the estate of Tenant L.H. at the site given the tenancy has not ended and S.V. has been living at the home. I am satisfied pursuant to section 64(2) of the *Act* that the estate of Tenant L.H. was served with the hearing package, amendment and evidence March 01, 2020. I find this considering section 83(a) of the *Act*. I find the package was served in sufficient time prior to the hearing.

As I was satisfied of service, I proceeded with the hearing in the absence of someone appearing for the estate of Tenant L.H. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence and oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

2. Is the Landlord entitled to an Order of Possession based on a One Month Notice?
3. Is the Landlord entitled to recover unpaid rent?
4. Is the Landlord entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started April 01, 2017 and is a month-to-month tenancy. The Agent testified that rent is currently \$741.00 per month. Rent is due on the first day of each month.

The Landlord submitted the Notice. It states that the tenants failed to pay \$789.00 in rent due September 01, 2019. It is addressed to Tenant L.H. and S.V. and refers to the site. It is signed and dated by the Agent. It has an effective date of September 14, 2019.

The Agent testified that both pages of the Notice were posted on the door of the home September 04, 2019.

The Agent gave conflicting testimony about what rent was due when as well as what rent payments were made when.

Eventually, the Agent testified as follows. Rent was \$723.00 for September and was not paid. The additional amount noted on the Notice is for the late fee. S.V. paid \$723.00 in rent September 19, 2019. Rent was raised to \$741.00 per month as of October 01, 2019.

The Agent testified that no rent had been paid since October and that \$5,187.00 in rent is outstanding.

The Agent testified that nobody disputed the Notice. The Agent testified that there was no authority under the *Act* to withhold rent.

The rent ledger submitted indicates that \$800.00 was paid on September 16, 2019 and not \$723.00 on September 19, 2019.

The Agent sought an Order of Possession effective two days after service.

Analysis

Section 20(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 39 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 39 state:

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.

(2) A notice under this section must comply with section 45 [form and content of notice to end tenancy].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this *Act* to deduct from rent.

(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 manufactured home site to which the notice relates by that date.

Based on the written tenancy agreement and undisputed testimony of the Agent, I am satisfied rent was \$723.00 for September and due September 01, 2019. Based on the undisputed testimony of the Agent, I am satisfied there was no authority under the *Act* to withhold rent for September. I find that rent of \$723.00 had to be paid by September 01, 2019 under section 20(1) of the *Act* and that section 39(3) of the *Act* does not apply.

Based on the undisputed testimony of the Agent, I am satisfied September rent was not paid by September 01, 2019. Given rent was not paid as required, the Landlord was entitled to serve the Notice pursuant to section 39(1) of the *Act*.

Based on the undisputed testimony of the Agent, I am satisfied pursuant to section 64(2) of the *Act* that the Notice was sufficiently served on the estate of Tenant L.H. September 04, 2019 and received September 07, 2019. I find this considering sections 81(g) and 83(c) of the *Act*. I am satisfied the Landlord was permitted to serve the estate of Tenant L.H. at the site given the same reasons noted above.

I have reviewed the Notice and find it complies with section 45 of the *Act* in form and content as required by section 39(2) of the *Act*.

The estate of Tenant L.H. had five days from receipt of the Notice to pay the outstanding rent or dispute the Notice under section 39(4) of the *Act*.

I am satisfied based on the rent ledger that the next payment made after the Notice was issued was on September 16, 2019 for \$800.00. This was made after the five-day time limit for paying the outstanding rent.

I am satisfied based on the undisputed testimony of the Agent that nobody disputed the Notice. There is no evidence before me that anybody did.

Given the estate of Tenant L.H. did not pay the outstanding rent or dispute the Notice within five days of receiving it, pursuant to section 39(5)(a) of the *Act*, the estate of Tenant L.H. is conclusively presumed to have accepted that the tenancy ended September 17, 2019, the corrected effective date of the Notice.

The Landlord is entitled to an Order of Possession. Pursuant to section 48(2)(b) of the *Act*, I issue the Landlord an Order of Possession effective two days after service.

I am satisfied based on the undisputed testimony of the Agent that \$5,187.00 in rent is currently outstanding. Pursuant to rule 4.2 of the Rules of Procedure, I allow the Landlord to amend the Application to seek this amount. I am satisfied the Landlord is entitled to recover this amount.

As the Landlord was successful in the Application, I award the Landlord \$100.00 as reimbursement for the filing fee pursuant to section 65 of the *Act*.

The Landlord is issued a Monetary Order for \$5,287.00 pursuant to section 60 of the *Act*.

I do not find it necessary to determine whether the Landlord is entitled to an Order of Possession based on a One Month Notice given my decision on the Notice.

Conclusion

The Landlord is entitled to an Order of Possession effective two days after service. This Order must be served on the estate of Tenant L.H. and, if the estate of Tenant L.H. does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to \$5,287.00 for unpaid rent and the filing fee. The Landlord is issued a Monetary Order in this amount. This Order must be served on the estate of Tenant L.H. and, if the estate of Tenant L.H. does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: April 30, 2020

Residential Tenancy Branch