



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LADHA ENTERPRISES L.T.D.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNRL, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent or Utilities, a monetary Order for unpaid rent or utilities, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that on March 06, 2020 the Dispute Resolution Package and evidence the Landlord submitted to the Residential Tenancy Branch was sent to the Tenant, via registered mail, at the service address noted on the Application. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary I find that these documents have been served in accordance with section 82 of the *Manufactured Home Park Tenancy Act (Act)*; however, the Tenant did not appear at the hearing.

As the aforementioned documents were properly served to the Tenant, the hearing proceeded in the absence of the Tenant and the evidence was accepted as evidence for these proceedings.

The Agent for the Landlord affirmed that she would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter

The Agent for the Landlord applied to amend the Application for Dispute Resolution to include unpaid rent from March and April of 2020. I find that it is reasonable for the Tenant to conclude that the Landlord is seeking to recover all of the rent that is currently due, including unpaid rent that has accrued since the Application for Dispute Resolution

was filed. I therefore grant the application to amend the monetary claim to include all rent that is currently due.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession and to a monetary Order for unpaid rent?

Background and Evidence

The Agent for the Landlord stated that:

- this tenancy began in 2004;
- during the latter portion of the tenancy the Tenant was required to pay monthly rent of \$615.00 by the first day of each month;
- the Tenant did not pay any rent for the period between November 01, 2019 and April 30, 2020, with the exception of \$500.00 paid on February 25, 2020 and \$600.00 paid on March 06, 2020;
- a Ten Day Notice to End Tenancy for Unpaid Rent or Utilities, which had an effective date of January 17, 2020, was posted on the door of the rental unit on January 07, 2020;
- the Tenant is still occupying the rental unit; and
- she does not think there is a term in the tenancy agreement that authorizes the Landlord to collect a late fee.

The Landlord is seeking all unpaid rent currently due. The Landlord is also seeking late fees of \$100.00, as rent was not paid when it was due in November of 2019, December of 2019, January of 2020, and February of 2020

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$615.00 by the first day of each month; that the Tenant has only paid \$1,100.00 in rent since November 01, 2019; and that the Tenant is still occupying the rental unit.

As the Tenant is required to pay rent when it is due, pursuant to section 20(1) of the *Act*, I find that the Tenant owed \$1,845.00 in rent for the period between November 01, 2019 and January 31, 2020. As this rent has not been paid, I find the Landlord is entitled to collect this amount from the Tenant.

Section 39(1) of the *Act* entitles landlords to end a tenancy within ten days if rent is not paid when it is due by providing proper written notice. On the basis of the undisputed evidence I find that the Ten Day Notice to End Tenancy, served pursuant to section 39 of the *Act*, was posted at the rental unit on January 07, 2020.

Section 83 of the *Act* stipulates that a document that is posted on a door is deemed to be received on the third day after it is posted. I therefore find that the Tenant is deemed to have received the Notice to End Tenancy on January 10, 2020.

Section 39(1) of the *Act* stipulates that a Ten Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenant is deemed to have received this Notice on January 10, 2020, I find that the earliest effective date of the Notice was January 20, 2020.

Section 46 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Ten Day Notice to End Tenancy was January 20, 2020.

Section 39 of the *Act* stipulates that a Tenant has five days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. I have no evidence that the Tenant exercised either of these rights and, pursuant to section 39(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I grant the landlord an Order of Possession that will be effective on May 31, 2020.

As the Tenant did not vacate the rental unit on January 20, 2020, I find that the Tenant is obligated to pay rent, on a per diem basis, for the days the Tenant remained in possession of the rental unit. As the Tenant has already been ordered to pay rent for the period between January 20, 2020 and January 31, 2020, I find that the Landlord has been fully compensated for that period.

I find that the Tenant was required to pay \$1,845.00 in rent for February, March, and April of 2020, as he remained in possession of the rental unit for those months. As the Tenant paid \$500.00 in rent on February 25, 2020 and \$600.00 on March 06, 2020, I find that the Tenant still owes \$745.00 in rent for these three months.

The Tenant is also obligated to pay rent for May of 2020, assuming he remains in possession of the rental unit for that month. Rent for May of 2020 is not reflected in the monetary Order, as it is not due until May 01, 2020.

Section 5 of the *Manufactured Home Park Tenancy Regulation* permits a landlord to collect a late fee when rent is not paid on time only if the tenancy agreement requires the Tenant to pay that fee. As there is no evidence that the tenancy agreement requires the Tenant to pay a fee if he is late paying his rent, I dismiss the Landlord's request for late payment fees.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the cost of filing this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective at 1:00 p.m. on May 31, 2020.

It is my understanding that due to the current health crisis in British Columbia, the Supreme Court of British Columbia is not enforcing most Orders of Possession. This does not affect the validity of this Order of Possession. In the event the Tenant is able to safely move out of the rental unit during this health crisis by the effective date of this Order of Possession, the Tenant should do so. The effective date of this Order is intended to provide the Tenant with a reasonable opportunity to safely secure alternate accommodations.

In the event the Tenant does not vacate the rental unit by the effective date of the Order of Possession, the Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court whenever that Court deems it appropriate.

The Landlord has established a monetary claim, in the amount of \$2,690.00, which includes \$2,590.00 in unpaid rent and \$100.00 in compensation for the fee paid to file this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for \$2,690.00. In the event the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Act*.

Dated: April 28, 2020

Residential Tenancy Branch