



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFL OPRM-DR

Introduction

This hearing dealt with the landlords' application pursuant to the *Manufactured Home Park Tenancy Act* (the "**Act**") for:

- an Order of Possession for non-payment of rent pursuant to section 48;
- a monetary order for unpaid rent in the amount of \$536 pursuant to section 60; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 65.

Tenant CH attended the hearing on behalf of both tenants. Landlord BS attended on behalf of both landlords. Both were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

BS testified, and CH confirmed, that the landlords served the tenants with the notice of dispute resolution form and supporting evidence package. The tenants did not submit any documentary evidence in response to the landlords' claim.

Preliminary Issue – Amendment of Claim

At the hearing the landlords sought to further amend their application to include a claim for February and March 2020 rent which BS testified remains outstanding.

Rule of Procedure 4.2 states:

4.2 Amending an application at the hearing

In circumstances that can reasonably be anticipated, such as when the amount of 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 landlords are seeking compensation for unpaid rent that has increased since they first applied for dispute resolution, I find that the increase in the landlord's monetary claim should have been reasonably anticipated by the tenants. Therefore, pursuant to Rule 4.2, I order that the landlord's application be amended to include a claim for February and March 2020 rent (\$1,072.26).

Issues to be Decided

Are the landlords entitled to:

- 1) an order of possession;
- 2) a monetary order for \$1,608.36; and
- 3) recover their filing fee?

Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agree on the key facts of this matter:

- 1) The parties entered into a tenancy agreement starting in the summer of 2012. Monthly rent is \$536.12.
- 2) The tenants have not paid rent for the months of January, February, or March 2020.
- 3) The landlord served a 10 Day Notice to End Tenancy on the tenants on January 11, 2020.

CH testified that the tenants could not pay rent because tenant RH is suffering from cancer, is sick, and has undergone a number of surgeries and blood transfusions recently. She testified that he is unable to work as a result.

BS stated that this does not relieve the tenants of their obligation to pay rent. She testified that the landlords are losing money as a result of the tenants' non-payment of rent.

Analysis

In accordance with sections 81 and 83 of the Act, I find that the tenants were served with the Notice on January 11, 2020.

Rule of Procedure 6.6 states:

6.6 The standard of proof and onus of proof

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

As such, the landlord must satisfy me that the tenant has failed to pay January rent. Based on CH's testimony, I find that the tenants have not paid rent for January, February or March 2020. Section 20 of the Act requires that a tenant pay rent when it is due:

Rules about payment and non-payment of rent

20(1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

There is no exception to this obligation based on a tenant's inability to pay rent.

I find that the Notice was validly issued, and that the tenant owes the landlord \$1,608.36 in rent for January, February, and March 2020 rent.

Therefore, I find that the landlords are entitled to an order of possession and a monetary order of \$1,608.36 for unpaid rent.

As the landlords were successful, they are entitled to recover the filing fee (\$100) from the tenants.

Conclusion

Pursuant to sections 60 and 65 of the Act, I order that the tenants pay the landlord \$1,708.36.

Pursuant to section 48 of the Act, I order that the tenants deliver to the landlords vacant possession of the rental unit within two days of being served this order by the landlords.

Residential Tenancy (COVID-19) Order, MO M089 (Emergency Program Act) made March 30, 2020 (the “**Emergency Order**”) permits an arbitrator to issue an order of possession if the notice to end tenancy the order of possession is based upon was issued prior to March 30, 2020 (as per section 3(2) of the Emergency Order).

However, per section 4(3) of the Emergency Order, a landlord may not file an order of possession at the Supreme Court of BC unless it was granted pursuant to sections 56 (early end to tenancy) or 56.1 of the Act (tenancy frustrated). The order of possession granted above is not issued pursuant to either section 56 or 56.1 of the Act.

This suspension of enforcement of orders of possession does not relieve the tenants from paying monthly rent. Rent continues to be due and payable in accordance with the tenancy agreement.

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: April 2, 2020

Residential Tenancy Branch