



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution. A participatory hearing was held on April 6, 2020. The landlord applied for the following relief, pursuant to the *Manufacture Home Park Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities;
- a monetary order for unpaid rent or utilities; and,
- to recover the filing fee from the tenant for the cost of this application.

One of the Landlords (the "landlord") and the Tenant both attended the hearing and provided testimony. The Landlord stated he posted his notice of hearing and evidence to the Tenant's door on March 16, 2020. The Tenant confirmed receipt of the package.

I note that section 82 of the Act lays out certain service requirements for the Notice of Dispute Resolution, and the Notice of Hearing. Section 82(1) lays out acceptable ways that these documents must be served (for monetary applications). Section 82(2) of the Act lays out other service requirements for applications which involve an order of possession. Serving the Notice of Hearing by posting it to the door for the purposes of a monetary claim is not acceptable but it is an acceptable way to serve if only an order of possession is required.

Having considered the totality of the situation, I find the Landlord did not sufficiently serve the Tenant such that I could hear the monetary claim for unpaid rent. Posting it to the door is not sufficient for a monetary claim. That being said, I find the Tenant has been served with the Notice of Hearing, on March 16, 2020, but only to hear the application for an order of possession. In short, I find the Tenant has been served, as of March 16, 2020, with the Landlord's application and evidence, but since the application

was only posted to the door, and not in accordance with section 82(1) of the Act, I dismiss the monetary portion of the Landlord's application, with leave to reapply.

The Tenant stated she gave her evidence to the Landlord in person, on April 1, 2020. As stated in the hearing, the Tenant's evidence is late, and is not admissible for this hearing. The Tenant was not sufficiently clear as to why she was unable to serve the Landlord with her evidence within the acceptable time frame defined under the Rules of Procedure.

Residential Tenancy Branch Rule of Procedure 3.14 and 3.15 requires that the applicant's evidence to be relied upon at a hearing must be received by the Residential Tenancy Branch and the respondents not less than 14 days before the hearing. Further, according to Rule 3.15, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

In this case, the Tenant is the respondent, and her deadline to ensure the Landlord received her evidence was March 30, 2020. Since she served this evidence late, it is not admissible. It will not be addressed further.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?

Background and Evidence

Both parties agreed that monthly rent was set at \$750.00 and was due on the first of the month. The Tenant rents a manufactured home site from the Landlord.

The Tenant acknowledged that she is having financial issues lately, and has separated from her partner, so her income has been impacted. The Tenant also expressed that ICBC withdrew money from her account, and she didn't have anything left for rent for January 2020. The Tenant stated that when January 1, 2020 came around, she only had \$80.00 in cash, so she paid this to the office on that day. The Tenant stated that

she normally pays by debit card in the office, but she did not have any money in her account that month.

The Tenant stated that she sold her generator so that she could pay rent. The Tenant referred to emails proving she sold the generator. However, none of the Tenant's evidence was admissible.

The Tenant acknowledged receiving the 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) on January 4, 2020. The amount listed on that Notice was \$670.00, which was due and unpaid as of January 1, 2020.

The Tenant stated that she tried to pay her rent at the office for the next 5 days, after she received the Notice, but the office was "closed". The Tenant stated that the Landlord refused to accept her money, tried to avoid her, and kept the office locked, with the lights off for the entire 5-day period following her getting the 10 Day Notice.

The Landlord stated this does not make sense because they would have no interest in preventing the Tenant from paying. As part of his explanation as to why the Tenant is lying, the Landlord explained that part of the reason he waited 2 months (after filing his application) before he served the Tenant with the Notice of Hearing, was because he wanted to encourage the Tenant to pay and to resolve the issue, and he was hopeful this could occur. The Landlord stated that they would much prefer the Tenant just pay rent, in full, than to pursue eviction. The Landlord explicitly denied ever closing the office, or refusing rent. The Landlord stated the Tenant is making up stories because she can't afford to pay. The Landlord explained that the office has a doorbell which can be rung, in the event no one is in the office. The Landlord stated that the Tenant never actually came and tried to pay, nor did she ring the bell.

The Tenant confirmed that she still owes \$670.00 in rent for January 2020, and \$750.00 in rent for February, March, and April. The Tenant stated that she only has a couple hundred dollars and can't afford the place she rents, let alone the unpaid balance she has accumulated. The Tenant stated she can no longer afford it after her partner moved out.

Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find as follows:

Section 20 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 39 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 39(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 39(5) of the *Act*.

In this case, I find that the tenant owed \$670.00 in past due rent at the time the Notice was issued on January 4, 2020. I find the Tenant received the Notice on January 4, 2020, as this is the date the Tenant confirmed receiving it.

The tenant had 5 days to pay rent in full or file an application for dispute resolution. The Tenant did not file an application to dispute the Notice. The Tenant stated that she tried to pay. In support of this, the Tenant had a witness statement, and evidence to show she sold a generator to help come up with her rent payment. However, as stated above, the Tenant's documentary evidence is not admissible. Her testimony is at odds with what the Landlord has presented. The Landlord explained that they never once refused rent payments from the Tenant, and if the Tenant wanted to pay when the office was locked, she could have rung the doorbell, which would have prompted them (they are always nearby). The Landlord stated that there is no way their office was closed for 5 straight days just to prevent the Tenant from paying.

When reviewing the evidence and testimony on this matter, I find there is no corroborating evidence showing the Tenant attempted to pay within the 5-day window. I accept the Landlord's statements that a large part of the reason he waited 2 months to serve his application and evidence, was because he was hoping the Tenant would pay and that this issue would resolve itself. I find this is consistent with someone who is trying to use the dispute resolution process as a last resort and trying to encourage payment, rather than refuse it, as the Tenant has asserted. I find the Landlord has provided a more compelling version of events, and I find it more likely than not that the Tenant did not pay, or attempt to pay rent, in full, within 5 days after receiving the Notice.

As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the tenant.

During the hearing, it was explained to the parties that if an order of possession was issued for non-payment of rent, it is a valid order. However, it is not enforceable until the state of emergency has been lifted for the Province.

Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court. However, this order may not be enforceable through the Courts, until the state of emergency has been lifted.

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: April 06, 2020

Residential Tenancy Branch