



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the *Manufactured Home Park Tenancy Act* (the “Act”), for a monetary order for unpaid rent, and to recover the cost of the filing fee.

The landlords attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlords testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on May 20, 2020, a Canada post tracking number. The landlords stated that the tenant received the documents, as the tenant contacted them and was upset and informed them not to send her mail by this method.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with the Act.

The landlord’s appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Preliminary matters

At the outset of the hearing the landlords requested to amend their application to include loss of subsequent rent and utilities from the date they filed their application. As rent is the most basic term of a tenancy agreement, I find, pursuant to section 55 of the Act that the landlords' application is amended to include a claim for loss of June, July, August and September 2020 rent and utilities.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The tenancy began on May 1, 2018. Rent is determined based on a daily amount of \$11.00 and is to be paid in full on the 1st of each month. The landlords stated that the tenant is also required to pay their portion of the hydro, which is due the following month.

The landlords claim as follows:

	Unpaid rent and utilities for 2020	
a.	May rent, unpaid utilities for April	\$ 435.16
b.	June rent, unpaid utilities for May	\$ 399.03
c.	July rent, unpaid utilities for June	\$ 413.02
d..	August rent, unpaid utilities for July	\$ 423.16
e.	September rent \$330.00 & utilities for August \$86.84	\$ 416.84
f.	Filing fee	\$ 100.00
	Total claimed	\$2,188.21

The landlords testified that the tenant has been a long term tenant and rents the site based on the above. The landlords stated that this is an RV park; however, this is the tenant's permanent primary residence and they have added permanent features such as skirting. The landlords stated that the tenant is responsible to pay their portion of the hydro, they pay for their own garbage pick and are responsible for their own site, such as cutting the grass. The landlords are not arguing the issue of jurisdiction.

The landlords testified that the tenant has not paid the above rent or utilities. The landlords stated that while May 2020 and August 2020 rent was due during the state of emergency; however, the tenant's financial situation did not change, and they were simply taking advantage that they could not be evicted.

The landlords testified that the only reason they have not issued an eviction notice for September 2020, was because they were informed by an information officer that it would only confuse things since they had a hearing already scheduled.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the /landlords' have the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 60 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

"rent" means money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a manufactured home site, for the use of common areas and for services or facilities, but does not include a fee prescribed under section 89 (2) (k) [*regulations in relation to fees*];

Rules about payment and non-payment of rent are defined in Part 2 of the Act.

Rules about payment and non-payment of rent

26 (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.

...

Although unusual rent is based on a daily amount of \$11.00 per day and is calculated at the being of each rental period and is due on the first of each month. Rent has been paid by this method since the tenancy commenced in 2018. Therefore, I find rent is \$11.00 per day and is calculated based on the number of days of the month.

I accept the undisputed testimony of the landlords that the tenant has not paid rent or utilities from May 2020 to and including September 2020. I find the tenant has breached the Act, when they failed to pay their rent.

As portion of the rent was due during the state of emergency and that affected rent is subject to a repayment schedule. I have determined to separate the affected rent from the non-affected rent in this decision.

I find the landlords are entitled to a monetary order for unpaid rent and utilities for May 2020 up to and including August 2020, in the amount of **\$1,758.21**. However, the landlords are required to give the tenant a repayment plan for this specific period. This will only apply if the tenancy continues. If the tenancy ends there is no requirement to offer the tenant a repayment plan.

I find the landlords are entitled to a monetary order for unpaid rent for September 2020 in the amount of **\$330.00**. This is due immediately and may be enforced in Provincial Court (Small Claims).

I find granting the landlords a monetary order for September 2020 rent does not take away the landlords' right to issue a 10 Day Notice to End Tenancy for Unpaid Rent. The tenant will have 5 days to pay the outstanding rent for September 2020, if such a notice is issued.

I find that the landlords have established a total monetary claim of **\$2,188.21** comprised of the above described amounts and the \$100.00 fee paid for this application.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court, should the tenancy end. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlords are granted a monetary order.

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: September 22, 2020

Residential Tenancy Branch