



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPRM-DR, OPR-DR-PP, FFL

Introduction

The landlord applies for an order of possession pursuant to ten day Notice to End Tenancy for unpaid rent and for a monetary award for \$408.00 in unpaid rent, as well as recovery of the filing fee for this application.

The respondent tenant did not attend for the hearing within twenty minutes after its scheduled start time at 11:00 a.m. on January 5, 2021. The teleconference hearing connection remained open during that time in order to enable the parties to call into the teleconference hearing. The call-in numbers and participant codes provided in the Notice of Hearing were confirmed as correct. The teleconference system audio console confirmed that the landlord's representative DS and this arbitrator were the only ones who had called into this teleconference during that period.

DS showed that the tenant had been served with the Notice of Dispute Resolution Proceeding by registered mail (Canada Post tracking number shown on cover page of this decision). Canada Post records show that the mail was sent November 4, 2020 and a "final notice" to claim the mail was given to the tenant on November 10. There is no further record of whether or not the tenant claimed the registered mail.

A party cannot avoid this process by declining to collect his or her mail. On the evidence, I find that the tenant has been duly served in accordance with ss. 82 and 83 of the *Manufactured Home Park Tenancy Act* (the "MHPTA").

DS for the landlord testifies that he attached the ten day Notice in question to the door of the tenant's manufactured home on September 23, 2020 and that the tenant failed to

either apply to dispute the Notice or pay the amount of rent demanded in it until a payment towards outstanding rent was made on November 2, 2020.

Section 39 of the *MHPTA* provides that if a tenant fails to pay rent as it comes due a landlord may issue to the tenant a ten day Notice to End Tenancy. Subsections (4) and (5) of s. 39 provide:

(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.

(emphasis added)

In this case, as the Notice was attached to the door of the tenant's manufactured home, it was deemed to have been received by him three days later, on September 26 (as per s. 83(c) of the *MHPTA*). The tenant did not dispute the Notice or pay the \$408.00 demanded in it within the five days following. As a result, the tenant is conclusively presumed to have accepted that the tenancy ended ten days after deemed receipt of the Notice.

I find that by operation of law this tenancy ended on October 5, 2020 and the landlord is entitled to an order of possession.

At the time this application was made, the landlord was owed \$408.00 in unpaid rent. Since then, according to DS, the tenant has made a \$460.00 payment on November 2 and a \$450.00 payment on December 8. In my view the "first in, first out" principal of accounting applies unless the parties otherwise agree and the \$408.00 debt existing at the time the landlord made its application on October 5, 2020 has been paid by the later payment.

The landlord's claim for a monetary award for unpaid rent owing as of October 5, 2020 must be dismissed. The landlord is free to apply for unpaid rent or for occupation rent accrued since then.

I award the landlord recover of the \$100.00 filing fee and grant it a monetary award against the tenant in that amount.

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: January 05, 2021

Residential Tenancy Branch