



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Desma Holdings Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes TT: CNR-MT
 LL: FFL, OPR, MNRL, MNDCL

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”);

The Tenant’s Application for Dispute Resolution was made on November 20, 2020 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the Act:

- an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated November 12, 2020 (the “10 Day Notice”);
- more time to extend the time limit established by the Act, to make an Application for dispute resolution to obtain an order cancelling the 10 Day Notice;

The Landlord’s Application for Dispute Resolution was made on December 14, 2020 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the Act:

- a monetary order for unpaid rent;
- an order of possession for unpaid rent; and
- an order granting recovery of the filing fee.

The Tenant, and the Landlord’s Agents J.K. and J.D. attended the hearing at the appointed date and time. At the start of the hearing, the Tenant stated that he did not serve the his Application or documentary evidence to the Landlord. As such, the Landlord’s Agents confirmed that they have not received any documents from the Tenant.

Analysis – Service of Tenant’s Application

Section 82 of the *Act* establishes the following Special rules for certain documents, which include an application for dispute resolution:

82(1) An application for dispute resolution,...when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;*
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;*
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;*
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;*
- (e) as ordered by the director under section 64(1) [director's orders: delivery and service of document]...*

The Tenant has not served the Landlord in a manner required by section 82(1) of the Act. As such, I dismiss the Tenant's Application without leave to reapply.

The Landlord's Agents stated that they served their Application as well as a copy of their documentary evidence to the Tenant via Registered Mail on December 24, 2020. The Landlord provided a copy of the Registered Mail receipt in support. Based on the oral and written submissions of the Landlord, and in accordance with sections 82 and 83 of the Act, I find that the Tenant is deemed to have been served with the Application and documentary evidence on December 29, 2020 the fifth day after the registered mailing.

The parties were given an 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 in relation to unpaid rent, pursuant to Section 39 and 48 of the Act?
2. Is the Landlord entitled to a monetary order for unpaid rent, pursuant to Section 60 of the Act?
3. Is the Landlord entitled to an order granting recovery of the filing fee, pursuant to Section 65 of the Act?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on August 1, 2008. Currently, the Tenant is required to pay a pad rent in the amount of \$327.00 which is due to the Landlord on the first day of each month.

The Landlord's Agents testified that they served the Tenant with a 10 Day Notice for Unpaid Rent dated November 12, 2020 with an effective vacancy date of November 27, 2020 by Registered Mail on November 12, 2020. The Landlord submitted the Registered Mail receipt in support. The Tenant confirmed receipt on November 12, 2020.

The 10 Day Notice states that the Tenant has failed to pay rent in the amount of \$7,150.00 which was due on November 1, 2020. The Notice informed the Tenant that the 10 Day Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant had five days to dispute the Notice.

The Landlord's Agents testified that the Tenant has failed to pay rent when due between 2013 and February 2021. The Landlord provided a detailed rent ledger showing which months the Tenant failed to pay rent for. The Landlord's Agents stated that they tried to work with the Tenant to provide him with an opportunity to catch up on the unpaid rent, however, despite the Tenant's assurance that he would pay the rent, the Landlord is now seeking to end the tenancy as a result of the non payments. The Landlord's Agents stated that the Tenant has paid no rent towards the outstanding balance shown on the 10 Day Notice. Currently, the Tenant owes rent to the Landlord in the amount of \$8,131.00.

The Tenant responded by acknowledging that he has some unpaid rent, however, disagreed with the amount indicated by the Landlord. The Tenant was unsure as to how much rent he currently owes. The Tenant stated that he provided his rent to a friend to pay to the Landlord on his behalf. The Tenant stated that he has not provided any evidence in support of this claim. Furthermore, the Tenant stated that his friend has since passed away.

Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

Section 20 of the Act explains that the 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. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 20 of the Act.

Section 39 of the Act states a Landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I accept that the Landlord's Agents served the 10 Day Notice dated November 12, 2020 with an effective vacancy date of November 27, 2020, to the Tenant by Registered Mail. As the Tenant confirmed receipt, I find that the 10 Day Notice was sufficiently served in accordance with the Act.

Section 39(4) says that within 5 days after receiving a notice under this section, the Tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution. Therefore, the Tenant had until November 17, 2020 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution. While the Tenant submitted an Application to dispute the 10 Day Notice, I find that the Application was filed on November 20, 2020, which is outside the time permitted under the Act. Furthermore, the Tenant's Application was dismissed as a result of the Tenant not serving the Application to the Landlord.

I accept the Landlord's Agents testimony that after service of the 10 Day Notice, the Tenant failed to pay the remaining balance of rent owing in the amount of \$8,131.00 for the outstanding rent from 2013 until February 2021. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, November 27, 2020, pursuant to section 39(5) of the Act.

I find that the 10 Day Notice complies with the requirements for form and content and as the effective date of the 10 Day Notice has passed, I find that the Landlord is entitled to an order of possession effective **2 (two) days**, after service on the Tenant, pursuant to section 48 of the Act. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

In light of the above, I find the Landlord has established an entitlement to a monetary award for unpaid rent in the amount of \$8,131.00. Having been successful, I also find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 60 of the Act, I find the Landlord is entitled to a monetary order in the amount of **\$8,231.00**.

Conclusion

The Tenant has breached the Act by not paying rent when due to the Landlord. The Landlord is granted an order of possession, which will be effective **two (2) days** after service on the Tenant. This order should be served as soon as possible and may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlord is granted a monetary order in the amount of **\$8,231.00**. The monetary order should be served to the Tenant as soon as possible and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: February 11, 2021

Residential Tenancy Branch