



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNRL, FFL

Introduction

This hearing dealt with the application filed by the Landlord under the *Manufactured Home Park Tenancy Act* (the “*Act*”) for an order of possession to enforce 10-Day Notice for Unpaid Rent (the Notice) issued on February 2, 2021, a monetary order for unpaid rent, and to recover the cost of filing the application. The matter was set for a conference call.

The Landlord attended the hearing and was affirmed to be truthful in their testimony. As the Tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing documentation was considered. Section 52 of the *Act* and 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 Landlord testified that the Application for Dispute Resolution and Notice of Hearing had been sent to the Tenant by registered mail on March 3, 2021; a Canada Post tracking number was provided as proof of service. Section 83 of the *Act* determines that a document served in this manner is deemed to have been received five days later. I find that the Tenant had been duly served in accordance with the Act.

The Landlord was provided with the opportunity to present their evidence orally and in written and documentary form and to make submissions at the hearing.

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.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession, pursuant to section 48 of the *Act*?
- Is the Landlord entitled to monetary compensation for unpaid rent and utilities?
- Is the Landlord entitled to recover the filing fee for this application?

Background and Evidence

The tenancy agreement recorded that the tenancy began on October 1, 2017, as a month-to-month tenancy and that rent in the amount of \$340.00 is to be paid by the first day of each month. The Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Tenant with the Notice to end tenancy by posting it to the front door of the rental unit on February 2, 2021, with an effective date of February 16, 2021, and an outstanding rent amount of \$2,210.00. The Notice informed the Tenant of the right to dispute the Notice or pay the outstanding rent within five days after receiving it. The Notice also informed the Tenant that if an application to dispute the Notice or payment of the outstanding rent in full is not made within five days, the Tenant is presumed to have accepted the Notice and must move out of the rental unit on the date set out on page one of the Notice. The Landlord submitted a copy of the Notice into documentary evidence.

The Landlord testified that the Tenant did not pay the outstanding rent amount listed on the Notice with the five-day timeline and that as of the date of this hearing, there is \$226.00 outstanding in rent payments due for this tenancy. The Landlord is requesting an Order of Possession to enforce their Notice and a Monetary Order for the outstanding rent due for this tenancy.

Analysis

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

Section 39 of the *Act* requires that upon receipt of a Notice to End Tenancy for Non-payment of Rent, a tenant must, within five days, either pay the amount of the arrears

indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not do either of these things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice under section 39(5).

Landlord's notice: non-payment of rent

39 (1) *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.*

(2) *A notice under this section must comply with section 45 [form and content of notice to end tenancy].*

(3) *A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.*

(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 rental unit to which the notice relates by that date.

I accept the undisputed testimony of the Landlord, and I find that the Tenant did not pay the rent or dispute the Notice in the required five-day legislated timeline and is now conclusively presumed to have accepted the tenancy ended on the effective date of the Notice.

Section 48 of the *Act* states that a landlord may request an order of possession if a notice to end the tenancy has been given by the landlord and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Order of possession for the landlord

48 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I find that the Landlord has proven their entitlement to an order of possession. Pursuant to section 48 of the *Act*, I grant an Order of Possession to the Landlord effective two days after service of the order on the Tenant. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Furthermore, I find that the Landlord has proven their entitlement to a monetary order for the unpaid rent. I award the Landlord a monetary award in the amount of \$226.00.

Additionally, section 65 of the *Act* gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Landlord has been successful in their application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid for this application.

I grant the Landlord a monetary order of \$326.00, consisting of \$226.00 in rent and the recovery of the \$100.00 filing fee for this hearing.

Conclusion

I find for the Landlord under sections 48, 60 and 65 of the *Act*.

I grant an **Order of Possession** to the Landlord effective **two days** after service of this Order on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I grant the Landlord a **Monetary Order** in the amount of **\$326.00**. The Landlord is provided with this Order in the above terms, and the Tenant must be served with this Order as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: May 28, 2021

Residential Tenancy Branch