



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding S&H's Holdings Ltd
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was made on July 16, 2021 and adjourned to a participatory hearing. This hearing was convened pursuant to the Landlord's Application seeking the following relief, pursuant to the Act:

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

The hearing was scheduled for 9:30AM on November 9, 2021 as a teleconference hearing. The Landlord's Agents J.C., S.H., and K.H. attended the hearing at the appointed date and time. No one attended the hearing for the Tenant. The conference call line remained open and was monitored for 16 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Adjourned Hearing. During the hearing, I also confirmed from the online teleconference system that the Landlord's Agents and I were the only persons who had called into this teleconference.

The Landlord's Agents testified the Application and documentary evidence package was served to the Tenant by registered mail on August 21, 2021. Copies of the Canada Post registered mail receipts and a picture of the envelope addressed to the Tenant were submitted in support. The Landlord's Agents stated that the package was later returned to the Landlord as unclaimed by the Tenant. The Landlord's Agents stated that they re-served the package to the Tenant in person shortly after it was returned to them by the Post Office. Based on the oral and written submissions of the Landlord's Agents, 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 August 26, 2021, the fifth day after their registered mailing.

The Landlord's Agents 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 an order granting recovery of the filing fee, pursuant to Section 65 of the *Act*?

Background and Evidence

The Landlord's Agents stated that the tenancy began on February 1, 2019. Currently, the Tenant is required to pay a pad rent in the amount of \$315.00 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 July 2, 2021 with an effective vacancy date of July 13, 2021 by posting it to the Tenant's door on July 2, 2021. The Landlord provided a proof of service in support.

The 10 Day Notice states that the Tenant has failed to pay pad rent and late rent fees in the amount of \$710.00 as of July 1, 2021. 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 in the amount of \$315.00 when due for June and July 2021. The Landlord's Agents stated that the Tenant is also required to pay a \$40.00 late payment fee which is part of the park rules. The Landlord's Agents stated that the Tenant has paid no rent towards the outstanding balance shown on the 10 Day Notice. Furthermore, the Landlord's Agents stated that the Tenant has not paid any rent to the Landlord since. Currently, the Tenant owes rent and late fees to the Landlord in the amount of \$2,170.00.

The Landlord is seeking an order of possession based on the 10 Day Notice. The Landlord is also seeking the return of the filing fee. As previously indicated, no one attended the hearing for the Tenant to respond to the Landlord's Application.

Analysis

Based on the uncontested 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 July 2, 2021 with an effective vacancy date of July 13, 2021 to the Tenant by posting it to the Tenant's door on July 2, 2021. Pursuant to Section 83 of the Act, I find that the 10 Day Notice is deemed to have been served to the Tenant three days later on July 5, 2021

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 July 10, 2021 to either pay the outstanding rent owed to the Landlord in full, or make an Application for dispute resolution.

I accept the Landlord's Agents testimony that after service of the 10 Day Notice, the Tenant failed to pay any rent to the Landlord. As the Tenant did not pay all the rent owed according to the 10 Day Notice within 5 days, or submit an application to dispute the 10 Day Notice, I find the Tenant is conclusively presumed to have accepted the tenancy ended on the effective date of the 10 Day Notice, 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.

Having been successful with the Application, I find that the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application. Pursuant to sections 60, and 65 of the Act, I find the Landlord is entitled to a monetary order in the amount of **\$100.00**.

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 **\$100.00**. 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: November 09, 2021

Residential Tenancy Branch