



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKBRIDGE LIFESTYLE COMMUNITIES
INC. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent or utilities, and to recover the filing fee from the tenant.

Only the landlord's agent and advocate appeared. The landlord's advocate stated that the Application for Dispute Resolution and Notice of Hearing, were sent by registered mail on July 21, 2021 to the executor of the tenant's estate. Filed in evidence is a copy of the tenant's Will showing KB as executor of the estate of the tenant and some email correspondence. Filed in evidence is a copy of the Canada post tracking number.

The advocate stated that on June 17, 2021 the executor accepted the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities by the same method and is likely avoiding service as Application for Dispute Resolution and Notice of Hearing, and evidence were returned unclaimed.

I find that the executor of the tenant's estate has been deemed served on July 26, 2021, five (5) days after it was mailed on July 21, 2021. Refusal or neglect to pickup the package does override the deemed service provision of the Act.

Issues to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and late fees?

Background and Evidence

The landlord's advocate stated that they had found out that the tenant was deceased as the rent cheque for February 2021, was returned from the bank for this reason. The advocate stated that in March 2021, they were contacted by the tenant's executor and they received a copy of the tenant's Will.

The landlord's advocate stated the executor of the tenant's estate was served with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), issued on June 15, 2021, by registered mail, which was received by the executor on June 17, 2021. Filed in evidence is a copy of the Canada post tracking history and a copy of the Notice.

The landlord's advocate stated at the time the Notice was issued the tenant was in rent arrears of \$1,376.48. The advocate stated rent was not paid within five days and the Notice was not disputed. The landlord seeks an order of possession. Filed in evidence is a copy of the rent ledger.

The landlord's advocate stated that on June 30, 2021, they received the amount of \$1,390.00 towards the rent arrears. Leaving a credit due of \$13.52. A receipt for use and occupancy only was issued.

The landlord's advocate stated that the tenant is currently in rent arrears and late fees totally the amount of \$1,822.04, as only part payments of rent were paid for July, August, September, and October 2021. The landlord seeks to recover the unpaid rent and late fees. The rent ledger filed in evidence show the payments made and that they were accepted for use and occupancy only and the late fees.

Analysis

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

Section 39 of the Act states,

(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 manufactured home site to which the notice relates by that date.

I have reviewed the Notice filed in evidence; I find the Notice complies with section 45 of the Act.

I find the executor of the tenant's estate received the Notice on June 17, 2021. The outstanding rent was not paid within five days and did not apply to dispute the Notice and is therefore conclusively presumed under section 39(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, which was June 30, 2021.

I find that the landlord is entitled to an order of possession, pursuant to section 48 of the Act, effective **two days** after service on the executor of the estate of the tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I am satisfied that the tenant is in current rent arrears and late fees totaling the amount of \$1,822.04. This is supported by the rent ledger, showing rent due and payments made towards the rent this includes October 2021, rent. This amount also includes late fees which is a term listed in the tenancy agreement. I find the landlord is entitled to recover the unpaid rent and late fees in the total amount of **\$1,822.04**.

I find that the landlord has established a total monetary claim of **\$1,922.04** comprised of unpaid rent, the late fee and the \$100.00 fee paid by the landlord for this application. I grant the landlord an order pursuant to section 60 of the Act. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The tenant failed to pay rent and did not file to dispute the notice to end tenancy. The tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the notice to end tenancy.

The landlord is granted an order of possession, and a monetary order in the above noted 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: November 01, 2021

Residential Tenancy Branch