



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR-DR, MNR-DR, FFL**

Introduction

On August 16, 2021, an Adjudicator appointed pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) adjourned the landlord's application for dispute resolution for the following items to a participatory hearing. She did so on the basis of an *ex parte* hearing using the Residential Tenancy Branch's direct request process. The adjudicator adjourned the direct request for the following reasons:

When making an application for dispute resolution through the direct request process, the landlord must provide copies of The Direct Request Worksheet (form RTB-46) setting out the amount of rent or utilities owing.

I have reviewed all documentary evidence and I find the landlords have not submitted a copy of the Direct Request Worksheet. In its place, I find the landlords submitted a copy of an Application for Dispute Resolution by Direct Request.

I further find that I am not able to consider the landlords' Application for Dispute Resolution without the Direct Request Worksheet, which forms a part of the Application, and that a participatory hearing is necessary.

This reconvened hearing dealt with an application filed by the landlord pursuant the *Manufactured Home Park Tenancy Act* (the "*Act*") for:

- An order of possession for unpaid rent by direct request, pursuant to sections 48 and 60;
- A monetary order for unpaid rent pursuant to section 60; and
- Authorization to recover the filing fee from the other party pursuant to section 65.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:30 a.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the

teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord MJ attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord testified that he sent the Notice of Dispute Resolution Hearing by registered mail to the tenant at the address where the tenant currently resides on August 26, 2021. The tracking number for the mailing is recorded on the cover page of this decision. The landlord testified that he spoke to the tenant on July 26, 2021 and in this conversation, the tenant advised the landlord that he was living with his uncle. The landlord asked the tenant to provide his current residential address and the tenant provided the address to the landlord by text message on July 26th at 1:42 p.m. The landlord confirmed he sent the Notice of Dispute Resolution Hearing package to the tenant at his uncle's address.

Although the landlord testified the Notice of Dispute Resolution Hearing package was returned to the landlord as unclaimed, I deem the tenant sufficiently served with it five days after mailing, on August 31, 2021 pursuant to section 64 of the *Act*. This hearing proceeded in the tenant's absence pursuant to rule 7.3 of the Residential Tenancy Rules of Procedure.

Issue(s) 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?
Can the landlord recover the filing fee?

Background and Evidence

I have reviewed all written submissions and evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The landlords submitted the following relevant evidentiary material:

- A copy of a manufactured home park tenancy agreement which was signed by one of the landlords and the tenant on July 14, 2019, indicating a monthly rent of \$233.00, due on the first day of each month for a tenancy commencing on July 14, 2019
- Written agreement from the tenant, signed by the tenant and the landlord on July 14, 2019, agreeing to an increase in rent from \$233.00 per month to \$268.00 per month effective November 1, 2019.
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 18, 2021, for \$4,020.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or

apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of June 5, 2021

- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail at 8:52 am on May 26, 2021
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the 10 Day Notice was sent to the tenant on May 18, 2021
- A direct request worksheet (form RTB-46) setting out the amount of rent owing.

The landlord testified that the co-landlord served a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities in February, 2020 however the tenant subsequently paid arrears in rent. On March 1, 2020 the tenant failed to pay rent in the amount of \$268.00. Subsequent to March 1st, the tenant did not pay rent for April or May or any time thereafter. By May 1, 2021, the tenant was in arrears of \$4,020.00. The tenant has continued to not pay rent and now owes rent for June through December 2021.

The landlord pointed to the proof of service document filed which indicates the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on May 18, 2021 by sending to the tenant's current residential address at the time, the site in the manufactured home park.

Analysis

I am satisfied the tenant was served with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent/Utilities on May 23, 2021, five days after May 18, 2021, the day it was sent by registered mail, in accordance with sections 82 and 83 of the *Act*.

Section 39 of the *Act* states that if a tenant does not pay the unpaid rent or dispute the notice by making an application for dispute resolution, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice and must vacate the manufactured home sit to which the notice relates by that date.

As the tenant has not filed an application to dispute the notice or pay the unpaid rent, the tenant is conclusively presumed to have accepted the tenancy ended on June 5, 2021, the effective date stated on the notice. Since this has not happened, the landlord is entitled to an Order of Possession effective two days after service upon the tenant.

The landlord has provided undisputed testimony and provided evidence sufficient to satisfy me that the tenant was required to pay rent in the amount of \$268.00 per month from March 1, 2020 and failed to do so. The tenant has failed to pay any rent

thereafter. As a result, I find the landlord is entitled to rent from March 1, 2020 until June 5, 2021. Section 50 states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the manufactured home site after the tenancy is ended. From June 6, 2021 to the date of this decision, the tenant is considered an overholding tenant and the landlord is entitled to compensation. As there is no difference between unpaid arrears in rent and compensation for an overholding tenant, I order that the landlord is entitled to a monetary order from March 1, 2020 to December 2, 2021. [$\$268.00 \times 16 \text{ months} + (\$268.00 / 12 \times 2 = \$44.68) = \$4,332.66$].

As the landlord's application was successful, the landlord is also entitled to recover the filing fee of \$100.00.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenants or anyone on the premises fail to comply with this Order, this Order may be filed and enforced in the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$4,432.66**

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: December 02, 2021

Residential Tenancy Branch