



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL, OPR, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the "**Act**") for:

- an order of possession for non-payment of rent pursuant to section 48;
- a monetary order for unpaid rent in the amount of \$4200.00 pursuant to section 60;
- authorization to recover the filing fee for this application from the tenant pursuant to section 65.

The landlord was represented at the hearing by an Agent. The Agent was given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 11:27 a.m. in order 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 Agent and I were the only ones who had called into this teleconference.

The Agent testified he served the tenant with the notice of dispute resolution form and supporting evidence package via registered mail on September 29, 2021. The landlord provided a Canada Post tracking number confirming this mailing which is reproduced on the cover of this decision. I find that the tenant was deemed served with this package on October 4, 2021, five days after the landlord mailed it, in accordance with sections 81, 82, and 83 of the *Act*.

At the outset, I advised the Agent of rule 6.11 of the Rules of Procedure (the "**Rules**"), which prohibits participants from recording the hearing. The Agent confirmed that he was not recording the hearing. I also advised the Agent that pursuant to Rule 7.4, I would only consider written or documentary evidence that was directed to me in this hearing.

Preliminary Issue- Amendment of Rent Owing

The Agent applied for a monetary order for unpaid rent in the amount of \$4200.00 as of September 29, 2021. In the hearing, the Agent stated the amount does not include outstanding rent from October 2021 through February 1, 2022, inclusive, in the amount of \$1750.00. The Agent requests an amendment of the monetary order to reflect the current outstanding balance of \$5950.00.

Policy Guideline #23 “Amending an Application for Dispute Resolution” subsection F provides:

F. PREDICTABLE AMENDMENTS

In accordance with rule 4. 2 (Amending an application at the hearing), when the amount of rent owing has increased since the time the application initially was filed, or in other circumstances that can reasonably be anticipated, the application may be amended through an oral request at the hearing. If such an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be filed or served.

I grant the Agent's request and amend the application to reflect the current outstanding balance of \$5950.00.

Issues to be Decided

Is the landlord entitled to:

- 1) an order of possession;
- 2) a monetary order for \$5950.00;
- 3) recover the filing fee;

Background and Evidence

While I have considered the documentary evidence and the testimony of the Agent, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the Agent's claims and my findings are set out below.

The Agent provided undisputed evidence regarding the following facts. This tenancy predated his role as Manager. He was unable to find a written tenancy agreement between the parties. The tenant did sign an application on May 28, 2018, so more likely than not, tenancy started June 1, 2018. Monthly PAD rent is \$350.00 payable on the first of each month. The Agent states a ledger shows the history of payment activity.

The tenant has failed to pay the rent as required under the tenancy agreement since October 2020 through February 2022. There was a rental area of \$4200.00 on September 08, 2021, when the 10-Day Notice to End Tenancy for Unpaid Rent was

issued. A copy of the 10-Day Notice was submitted into evidence. The Agent testified that he served the 10-Day Notice by posting it on the door of the manufactured home on September 08, 2021, at 2:28 p.m. The Agent submitted a signed and witnessed Proof of Service form as evidence of service.

The tenant has neither made payment against the arrears nor filed an application for dispute resolution. The Agent testified that as at the date of the hearing, February 3, 2022, the total rental arrear is \$5950.00.

Analysis

In accordance with subsection 39(5) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five (5) days of receiving the 10-Day Notice. In this case, as the Agent provided undisputed evidence that the tenant was served with the 10-Day Notice by posting on September 8, 2021, I find the tenant deemed served on September 11, 2021, three (3) days after posting in accordance with sections 81 and 83 of the *Act*.

I accept the evidence of the Agent that the tenant has neither disputed the notice nor has she paid any rent within five (5) days of service or at all. Accordingly, I find that the tenant is conclusively presumed under s. 39(5) of the *Act* to have accepted that tenancy ended on September 21, 2021, the effective date on the 10 Day Notice. I grant the landlord an Order of Possession pursuant to s. 48 of the *Act*. As the effective date has passed, I issue an Order effective two (2) days after service.

I accept the undisputed testimony of the Agent that the total amount of rental arrears is \$5950.00. I issue a monetary award for unpaid rent owing in the amount of \$5950.00, pursuant to s. 60 of the *Act*.

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

Conclusion

I grant an Order of Possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$6050.00 allowing for recovery of the filing fee and unpaid rent for this tenancy. 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: February 4, 2022

Residential Tenancy Branch