



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR FFL

Introduction

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

- an Order of Possession for unpaid rent pursuant to section 48; and
- authorization to recover the filing fee for this application pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to an Order of Possession for unpaid rent?

Are the landlords entitled to recover their filing fee from the tenants?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

The parties agree that monthly rent for this tenancy is \$394.26 payable on the first of each month. The tenants failed to pay rent as required on October 1, 2021. The landlords issued a 10 Day Notice on October 7, 2021 posting it on the rental unit door on that date.

The tenants testified that they received the 10 Day Notice on October 9, 2021 and issued full payment of the arrear via cheque sent by mail on that date. The tenants did not provide any valid postal receipt to support their claim that payment was mailed on that date. The landlords testified that they received the cheques from the tenants on or about October 25, 2021. The landlords submit they did not receive any payment from the tenants within the 5 days provided under the Act and any subsequent payment received was noted to be for use and occupancy only.

The tenants also testified that other occupants of the rental unit attempted to make payment on their behalf to the landlords, but payments were refused.

The documentary evidence of the tenants include correspondence between the occupants of the rental unit and the landlords dated October 7, 2021 where the landlord writes:

We don't know if we can legally accept money from you and not [the Tenants].
We will contact the tenancy board on Tuesday to get some legal advice. I will send you a note when we know.

The tenants' evidence also contains correspondence between the tenants and landlords dated November 4, 2021 where the landlord writes:

If you are planning to pay by cheque you will need send new one's. None of the cheques can refer to "pad rent" and must be labeled as "License to Occupy".

The landlords issued receipts to the tenants dated December 30, 2021 in the amount of \$1,182.78 for use and occupancy of the rental unit for October, November and

December, 2021 and a subsequent receipt dated January 1, 2022 for use and occupancy in January 2022.

Analysis

I accept the undisputed evidence of the landlords that they served the tenants with the 10 Day Notice in accordance with section 81(g) of the *Act* by posting on the door of the rental unit on October 7, 2021. Pursuant to section 83(c) I find that the notice is deemed served on October 10, 2021, three days after posting.

Pursuant to section 39(4) of the *Act* a tenant has 5 days after the day of receiving the notice to either pay the overdue rent in full or make an application for dispute resolution.

In the present case, as I have found the tenants deemed served with the 10 Day Notice on October 10, 2021, they had 5 days from that date, until October 15, 2021 to either make full payment or file an application for dispute.

The tenants submit that they issued payment by mail on October 9, 2021, within the 5 days provided. Section 83(a) of the *Act* provides that documents sent by mail is deemed served on the fifth day after mailing. In this case, the date of deemed receipt is October 14, 2021, within the 5 days provided under section 39(4).

The landlords dispute that they received the tenants' payment until October 25, 2021 and the tenants had no documentary evidence of the date they sent the rental payment. In the absence of documentary evidence in support of their submissions I find the tenants' testimony to be insufficient to demonstrate that rent was paid within the timelines required under the *Act*.

I find little evidence that the landlord refused to accept payments that were attempted within the 5 days provided under the *Act*. I find the ordinary reading of the correspondence between the landlords and the occupants to be that the landlords were fully willing to accept payment by the third parties but needed to understand if this was acceptable under the law. I do not find the response provided by the landlords to be a refusal of payment. The parties did not give evidence of what communications there were between the landlords and the occupants after the messages of October 7, 2021 but on the basis of the evidence before me I find that there was no refusal of payment on the part of the landlords.

I further note that the correspondence between the parties makes reference to “new cheques” being required indicating that some attempts to pay were received, is dated November 4, 2021. If the tenants mailed payment on October 9, 2021 as claimed I find it would be reasonable that the parties would address the issue of the 10 Day Notice at that time instead of waiting several weeks to communicate. The receipt issued by the landlords for the tenants’ use and occupancy of the property is dated December 30, 2021. I find the documentary evidence of the tenants to be inconsistent with their oral submission that payment of the October rental arrear was sent by mail on October 9, 2021.

I am satisfied that the landlords indicated on all receipts that payments were accepted for use and occupancy of the property only and did not reinstate the tenancy. I find there is no evidence that the landlords indicated that the 10 Day Notice was withdrawn or that they were not seeking an Order of Possession.

Based on the totality of the evidence I find the landlords have established on a balance of probabilities that there was a rental arrear of \$384.26 as at October 7, 2021 giving rise to the issuance of the 10 Day Notice. I am satisfied with the evidence that payment was not made within 5 days of the date of service by the tenants.

Therefore, pursuant to section 39(5) of the *Act*, I find the tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of the notice. I issue an Order in the landlords’ favour accordingly. As the effective date of the notice has passed, I issue an Order enforceable 2 days after service on the tenants.

As the landlords were successful in their application, they are also entitled to recover the filing fee from the tenants. I issue a monetary award in the landlords’ favour for \$100.00 accordingly.

Conclusion

I grant an Order of Possession to the landlords effective **2 days after service on the tenants**. Should the tenants 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 landlords' favour in the amount of \$100.00. The tenants must be served with this Order as soon as possible. Should the tenants 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 *Manufactured Home Park Tenancy Act*.

Dated: February 7, 2022

Residential Tenancy Branch