



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding EL CAMINO ESTATES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Landlord on November 01, 2021 (the “Application”). The Landlord applied as follows:

- For an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated October 01, 2021 (the “Notice”)
- To recover unpaid rent
- To recover the filing fee

The Agent for the Landlord (the “Agent”) appeared at the hearing. Nobody appeared at the hearing for the Tenant. I explained the hearing process to the Agent who did not have questions when asked. I told the Agent they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Agent provided affirmed testimony.

The Landlord submitted evidence prior to the hearing. The Tenant did not submit evidence. I addressed service of the hearing package and Landlord’s evidence.

The Agent testified that the hearing package and Landlord’s evidence were sent to the Tenant at the site by registered mail and that Tracking Number 786 relates to this. The Landlord submitted registered mail receipts with Tracking Number 786 on them. I looked Tracking Number 786 up on the Canada Post website which shows the package was sent December 14, 2021 and unclaimed by the Tenant.

Based on the undisputed testimony of the Agent, registered mail receipts and Canada Post website information, I am satisfied the Tenant was served with the hearing package and Landlord's evidence in accordance with sections 81(c) and 82(1)(c) of the *Manufactured Home Park Tenancy Act* (the "Act") on December 14, 2021. The Tenant cannot avoid service by failing to pick up registered mail. Pursuant to section 83(a) of the Act, the Tenant is deemed to have received the hearing package and evidence December 19, 2021. I also find the Landlord complied with rule 3.1 of the Rules in relation to the timing of service.

As I was satisfied of service, I proceeded with the hearing in the absence of the Tenant. The Agent was given an opportunity to present relevant evidence and make relevant submissions. I have considered all documentary evidence and oral testimony of the Agent. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?
2. Is the Landlord entitled to recover unpaid rent?
3. Is the Landlord entitled to recover the filing fee?

Background and Evidence

A written tenancy agreement was submitted. The tenancy started January 01, 2013 and is a month-to-month tenancy. The Agent testified that rent is currently \$330.00 per month and has been since January 01, 2020. Rent is due on the first day of each month.

The Notice was submitted. The Notice states that the Tenant failed to pay \$990.00 in rent due October 01, 2021. The Notice has an effective date of October 10, 2021.

The Agent testified that the Notice was served on the Tenant in person October 01, 2021.

The Agent testified that the Tenant failed to pay rent for September and October of 2021 and \$990.00 in rent was due October 01, 2021.

The Agent testified that the next rent payment made after the Notice was issued was October 07, 2021 in the amount of \$330.00. The Agent testified that the Tenant also paid \$990.00 on December 29, 2021. The Agent testified that the Tenant owed \$990.00 in rent as of the hearing date. The Agent testified that they are not aware of the Tenant having authority under the *Act* to withhold rent.

The Agent testified that they are not aware of the Tenant disputing the Notice.

The Agent sought an Order of Possession effective two days after service on the Tenant.

The Landlord submitted the following documentary evidence:

- The Notice
- Proof of Service
- Direct Request Worksheets
- Deposit slip
- Tenancy agreement
- Assignment of leases
- Change of address letter

Analysis

Section 20(1) of the *Act* requires a tenant to pay rent in accordance with the tenancy agreement unless they have a right to withhold rent under the *Act*.

Section 39 of the *Act* allows a landlord to end a tenancy when a tenant fails to pay rent. The relevant portions of section 39 state:

39 (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 accept the undisputed testimony of the Agent and based on it, as well as the documentary evidence provided, I find the following.

The Tenant is required to pay \$330.00 per month in rent by the first day of each month pursuant to the tenancy agreement between the parties.

The Tenant did not have authority under the *Act* to withhold rent at any point.

The Tenant was required to pay \$330.00 in rent per month by September 01, 2021 and October 01, 2021 pursuant to section 20(1) of the *Act* and section 39(3) of the *Act* does not apply.

The Tenant failed to pay rent for September of 2021 by September 01, 2021 and therefore the Landlord was entitled to serve the Tenant with the Notice on October 01, 2021 for outstanding rent from September. I note that the Landlord was not entitled to include October's rent on the Notice because it was issued October 01, 2021, prior to October's rent being past due.

The Tenant was served the Notice in accordance with section 81(a) of the *Act* on October 01, 2021.

I have reviewed the Notice and find it complies with section 45 of the *Act* in form and content as required by section 39(2) of the *Act*. I acknowledge that the Notice states that \$990.00 in rent was due and I am basing this decision on unpaid rent for September; however, the incorrect rent amount does not invalidate the Notice.

The Tenant had five days from receipt of the Notice on October 01, 2021 to pay the outstanding rent or dispute the Notice pursuant to section 39(4) of the *Act*.

The next rent payment made was \$330.00 on October 07, 2021, past the five-day deadline.

The Tenant did not dispute the Notice.

Given the Tenant did not pay the outstanding rent or dispute the Notice within five days of October 01, 2021, I find pursuant to section 39(5)(a) of the *Act* that the Tenant is conclusively presumed to have accepted that the tenancy ended October 11, 2021, the corrected effective date of the Notice. The Tenant was required pursuant to section 39(5)(b) of the *Act* to vacate the rental unit by October 11, 2021.

The Landlord is entitled to an Order of Possession. Pursuant to section 48(2)(b) of the *Act*, I issue the Landlord an Order of Possession effective two days after service on the Tenant.

The Tenant owed \$990.00 in rent as of the hearing date. The Tenant did not have authority under the *Act* to withhold rent. I allow the Landlord to amend the Application to seek the full amount of rent outstanding pursuant to rule 4.2 of the Rules. The Landlord is entitled to recover \$990.00 in unpaid rent.

Given the Landlord was successful in the Application, I award them \$100.00 as reimbursement for the filing fee pursuant to section 65(1) of the *Act*.

In total, the Landlord is entitled to \$1,090.00. I issue the Landlord a Monetary Order for \$1,090.00 pursuant to section 60 of the *Act*.

Conclusion

The Landlord is entitled to an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not

comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is entitled to \$1,090.00 and I issue the Landlord a Monetary Order in this amount. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: March 02, 2022

Residential Tenancy Branch