



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

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* ("Act") for:

- an order of possession for unpaid rent, pursuant to section 48;
- a monetary order for unpaid rent of \$1,195.00, pursuant to section 60; and
- authorization to recover the \$100.00 filing fee paid for this application, pursuant to section 65.

The tenant did not attend this hearing, which lasted approximately 28 minutes. The landlords' agent attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 11:00 a.m. and ended at 11:28 a.m. I monitored the teleconference line throughout this hearing. 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's agent and I were the only people who called into this teleconference.

The landlords' agent provided his name and spelling. He confirmed that he had permission to speak on behalf of the two landlord companies (collectively "landlords") named in this application, at this hearing. He provided an email address for me to send this decision to the landlords after the hearing. He stated that landlord company RWC owns the manufactured home park ("park") and the manufactured home site ("site"). He said that landlord company BHV is the name of the park. He confirmed that both landlord companies should be named in this application. He provided the addresses of

the site and the park. He said that the tenant owns his own manufactured home (“home”) and rents the site from the landlords in the park.

Rule 6.11 of the Residential Tenancy Branch *Rules of Procedure* does not permit recording of this hearing by any party. At the outset of this hearing, the landlords’ agent affirmed, under oath, that he would not record this hearing.

I explained the hearing process to the landlords’ agent. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

Preliminary Issue – Service of Landlords’ Application

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. The direct request proceeding is based on the landlords’ paper application only, not any submissions from the tenant. An “interim decision,” dated April 4, 2022, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing. A notice of reconvened hearing, dated April 4, 2022, was also issued.

The Adjudicator noted the following at page 2 of the interim decision, as the reason for the adjournment to a participatory hearing:

I have reviewed all documentary evidence and I find that the rental address does not appear on the residential tenancy agreement submitted by the landlord.

I find that this discrepancy raises a question that can only be addressed through a participatory hearing.

The landlords were required to serve the tenant with a copy of the interim decision, the notice of reconvened hearing, and all other required documents, within three days of receiving it, as outlined in the interim decision itself.

The landlords’ agent testified that the tenant was served with the above documents on April 6, 2022, by way of posting to the tenant’s home door. He said that the tenant would not provide him with a valid mailing address or an email address. He stated that he called the RTB and was told that he could serve the above documents by posting it to the tenant’s door. The landlords provided a signed, witness proof of service for same. In accordance with sections 82 and 83 of the *Act*, I find that the tenant was

deemed served with the interim decision and notice of reconvened hearing on April 9, 2022, three days after its posting.

The landlords' agent testified that the tenant was served with the landlords' original application for dispute resolution by direct request on March 15, 2022, by way of posting to the tenant's home door. The landlords provided a signed, witness proof of service for same. In accordance with sections 82 and 83 of the *Act*, I find that the tenant was deemed served with the landlords' original application for dispute resolution by direct request on March 18, 2022, three days after its posting.

I notified the landlords' agent that I could not hear the landlords' monetary claim for unpaid rent because the landlords' original application, evidence, interim decision, and notice of reconvened hearing were posted to the tenant's home door, which is only permitted for orders of possession, as per section 82(2) of the *Act*, not for monetary claims, as per section 82(1) of the *Act*. The landlords' agent confirmed his understanding of same, stating that he wanted to proceed with this hearing for the order of possession claim only and reapply for the monetary order for unpaid rent in the future. I informed him that the landlords' application for a monetary order for unpaid rent was dismissed with leave to reapply and he confirmed his understanding of same.

The landlords' agent stated that the tenant was served with the landlords' 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 14, 2022 ("10 Day Notice"), on February 15, 2022, by way of posting to the tenant's home door. The landlords provided a signed, witnessed proof of service for same. The landlords' agent confirmed that the effective move-out date on the notice is February 28, 2022. In accordance with sections 81 and 83 of the *Act*, I find that the tenant was deemed served with the landlords' 10 Day Notice on February 18, 2022, three days after its posting.

The landlords' agent was provided with ample and additional time during this 28-minute hearing, to go through his documents, in order to provide service information. The landlords' provided confusing and changing testimony regarding service of the above documents during this hearing. However, I accept the undisputed affirmed testimony of the landlords' agent, which I clarified with him a few times during this hearing.

Issues to be Decided

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

Are the landlords entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to the landlords' documentary evidence and the testimony of the landlords' agent, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlords' claims and my findings are set out below.

The landlords' agent testified regarding the following facts. This tenancy began on October 1, 1997. Monthly rent in the current amount of \$365.00 is payable on the first day of each month. No security or pet damage deposits were paid by the tenant. A written tenancy agreement was signed by both parties. The landlords' agent stated regarding the following facts. The landlords included the site number on the top right-hand corner of page 1 of the tenancy agreement. The landlords omitted the site address and the park address on page 1 of the tenancy agreement, referring to the address where the tenant was renting. However, the tenancy agreement was written many years ago and there have been many changes in the landlords' management since. The tenant continues to reside in his home at the rental site in the park.

The landlords' agent testified regarding the following facts. The landlords seek an order of possession based on the 10 Day Notice. The landlords issued the 10 Day Notice for unpaid rent of \$830.00 due on February 1, 2022. The tenant failed to pay rent of \$100.00 for December 2021, \$365.00 for January 2022, and \$365.00 for February 2022, totalling \$830.00, to the landlords. The tenant has also failed to pay rent of \$365.00 for each month in March, April, and May 2022, to the landlords. The landlords' agent spoke with the tenant on April 5, 2022, where the tenant claimed that he had bank drafts and he would pay the landlords for the unpaid rent. However, the tenant failed to pay any unpaid rent to the landlords, as he could not find his bank drafts when the landlords' agent accompanied the tenant to his rental home and site on April 5, 2022.

Analysis

I accept the undisputed affirmed testimony of the landlords' agent at this hearing, that the site address is noted on page 1 of the tenancy agreement. I also find that a reference to the park name, mailing address, city and postal code are also noted on the tenancy agreement. Further, the landlords' 10 Day Notice and proof of service includes the rental site and park addresses.

The landlords provided undisputed affirmed evidence at this hearing, as the tenant did not attend. The tenant failed to pay the full rent due on February 1, 2022, within five days of being deemed to have received the 10 Day Notice. The tenant has not made an application pursuant to section 39(4) of the *Act* within five days of being deemed to have received the 10 Day Notice.

In accordance with section 39(5) of the *Act*, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on February 28, 2022, the effective date on the 10 Day Notice. In this case, this required the tenant and anyone on the premises to vacate the premises by February 28, 2022. As this has not occurred, I find that the landlords are entitled to a two (2) day Order of Possession against the tenant, pursuant to section 48 of the *Act*. I find that the landlords' 10 Day Notice complies with section 45 of the *Act*.

The landlords were only partially successful in this application, since the landlords' monetary order for unpaid rent claim was dismissed with leave to reapply, due to service issues of the landlords. Accordingly, I find that the landlords are not entitled to recover the \$100.00 filing fee from the tenant.

Conclusion

I grant an Order of Possession to the landlords effective two (2) days after service on the tenant. The tenant must be served with this Order as soon as possible. Should the tenant or anyone 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.

The landlords' application for a monetary order for unpaid rent of \$1,195.00 is dismissed with leave to reapply. The landlords' application to recover the \$100.00 filing fee is dismissed without leave to reapply.

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: May 06, 2022

Residential Tenancy Branch