



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding W.V. INCOME PROPERTIES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **CNR-MT**

Introduction

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

1. Cancellation of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to Sections 39 and 55 of the Act; and,
2. More time to dispute the notice pursuant to Section 59 of the Act.

The hearing was conducted via teleconference. The Landlord's Property Manager, JD, attended the hearing at the appointed date and time and provided affirmed testimony. The Tenant did not attend the 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 Property Manager and I were the only ones who had called into this teleconference. The Landlord's Property Manager was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Landlord's Property Manager that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Landlord's Property Manager testified that he was not recording this dispute resolution hearing.

The Landlord personally served the 10 Day Notice on February 8, 2022. The Tenant applied for dispute resolution on February 18, 2022. I find that the 10 Day Notice was served on the Tenant on February 8, 2022 pursuant to Section 81(a) of the Act.

The Landlord's Property Manager testified that the Tenant personally served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing after February 24, 2022 (the "NoDRP package"). I find that the Landlord was sufficiently served with the NoDRP package for this hearing on February 27, 2022, in accordance with Section 64(2) of the Act.

The Landlord's Property Manager testified that they served their evidence on the Tenant by email on an unknown date. The Landlord's Property Manager stated they received notice from the Tenant that she could not open the files sent to her by email. The Landlord's office staff offered to print off the Landlord's evidence and leave it on the office desk for the Tenant's pick up. As of the hearing date, the Tenant had not picked up the Landlord's evidence. I will not refer to the Landlord's evidence package, rather just the Landlord's Property Manager's verbal testimony will be the evidence to which the Landlord can rely.

Preliminary Matter

Monetary Amount

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept the Landlord's Property Manager's request to amend their original application from \$2,596.69 to \$2,871.69 to reflect the unpaid rent that became owing by the time this hearing was convened.

Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's 10 Day Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession and a Monetary Order for the unpaid rent?
3. Is the Tenant entitled to more time to dispute the 10 Day Notice?

Background and Evidence

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

The Landlord's Property Manager testified they have no formal tenancy agreement between this manufactured home site and the Tenant. The tenancy began approximately on May 9, 2013. Monthly rent is \$844.77 payable on the first day of each month.

The reason in the 10 Day Notice why the Landlord was ending the tenancy was because the Tenant owed \$2,596.69 in outstanding rent on February 1, 2022. The effective date of the 10 Day Notice was February 18, 2022.

The Landlord's Property Manager stated that the Tenant has a protracted late rent accumulation situation. He stated that they have endeavoured to be patient and work with the Tenant, but she has not been able to bring her account up-to-date. Recently, the Landlord's Property Manager stated they received an email from the Tenant requesting them to stop taking the agreed \$200.00 extra per month as it is not working for the Tenant.

The Landlord is seeking an Order of Possession and a Monetary Order for unpaid rent in the amount of \$2,871.69.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to Rules of Procedure 7.3, in the Tenant's absence, therefore, all the Landlord's Property Manager's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution

hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

Section 20(1) of the Act specifies the rules about payment of rent. It states, *a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.*

Section 39 of the Act outlines how a tenancy can end for unpaid rent:

Landlord's notice: non-payment of rent

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].*

...

(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.*

...

The Landlord's 10 Day Notice was served on February 8, 2022. I find that the Landlord's 10 Day Notice complied with the form and content requirements of Section 45 of the Act. The Tenant did not pay the overdue rent within five days after receiving the 10 Day Notice. The Tenant did apply for dispute resolution on February 18, 2022

which is beyond the five days after receiving the 10 Day Notice, which would have been February 13, 2022. RTB Rules of Procedure definition for 'Days' states:

If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.

As February 13, 2022 was a Sunday, the last allowable day for making an application for dispute resolution fell on February 14, 2022. The Tenant's application did request more time to apply for dispute resolution, but the Tenant did not attend the hearing to provide evidence on why she needed more time. I find the Tenant neither paid the overdue rent nor applied for dispute resolution; therefore pursuant to Section 39(5), the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice which was February 18, 2022. I dismiss the Tenant's application to cancel the 10 Day Notice without leave to re-apply.

I must consider if the Landlord is entitled to an Order of Possession and a Monetary Order for unpaid rent. Section 48 of the Act reads as follows:

Order of possession for the landlord

- 48 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if,*
- (a) the landlord's notice to end tenancy complies with section 45 [form and content of notice to end tenancy], and*
 - (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*
- (1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 39 [landlord's notice: non-payment of rent], and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.*

I previously found that the Landlord's 10 Day Notice complied with Section 45 of the Act and I dismissed the Tenant's application. I find the Landlord is entitled to an Order of

Possession pursuant to Section 48(1) of the Act which will be effective two (2) days after service on the Tenant. The Landlord is also entitled to a Monetary Order to recover the outstanding rent amount pursuant to Section 48(1.1) of the Act. The total outstanding rent amount is \$2,871.69. RTB Rules of Procedure 4.2 allows me to amend the Landlord's original application amount, and I do so in this decision. The Landlord's total Monetary Award is \$2,871.69.

Conclusion

The Landlord is granted an Order of Possession, which will be effective two (2) days after service on the Tenant. The Landlord must serve this Order on the Tenant as soon as possible. The Order of Possession may be filed in and enforced as an Order of the British Columbia Supreme Court.

I grant a Monetary Order to the Landlord in the amount of \$2,871.69. 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 of British Columbia 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: May 31, 2022

Residential Tenancy Branch