



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OPR, FFL**

Introduction

This hearing was convened as a result of the Landlord's application for dispute resolution ("Application") under the *Manufactured Home Park Tenancy Act* (the "Act"). The Landlord applied for:

- an Order of Possession for non-payment of rent pursuant to sections 39 and 48; and
- authorization to recover the filing fee for the Landlord's their application from the Tenant pursuant to section 65.

The Tenant did not attend this hearing. I left the teleconference hearing connection open until 11:52 am in order to enable the Tenant to call into this teleconference hearing scheduled for 11:00 am. The Landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding ("NDRP"). I also confirmed from the teleconference system that the Landlord and I were the only ones who had called into this teleconference.

The Landlord stated he served the NDRP and his evidence ("NDRP Package") on the Tenant in-person on March 26, 2022. Based on the undisputed evidence of the Landlord, I find the NDRP Package was served on the Tenant in accordance with the provisions of sections 81 and 82 of the Act. Pursuant to section 83 of the Act, I find the Tenant was deemed to have been served with the NDRP Package on March 31, 2022.

The Landlord stated he was not served with any evidence from the Tenant for this hearing.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession for unpaid rent?
- recovery of the filing fee for the Application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The Landlord stated there is no written tenancy agreement and that the tenancy was made by the parties pursuant to an oral agreement. The Landlord stated the tenancy commenced approximately six years ago, on a month-to-month basis, with rent of \$360.00 payable on the 1st day of each month. The Landlord stated the Tenant has not vacated the home site.

The Landlord stated he served a Ten Day Notice to End Tenancy for Unpaid Rent and/or Utilities dated February 15, 2022 ("10 Day Notice") on the Tenant in-person on February 15, 2022. The Landlord submitted a copy of the 10 Day Notice on which the Tenant signed the bottom of page 1 of the Notice to acknowledge receipt of it. The Landlord testified the 10 Day Notice stated the effective date for the Tenant to vacate the home site was February 25, 2022 ("Effective Date"). I find the Tenant was served with the 10 Day Notice in accordance with the provisions of section 81 of the Act.

The Landlord testified the 10 Day Notice stated the Tenant owed him \$720.00 for rental arrears as of February 1, 2022 calculated as follows:

Date	Rent Owed	Paid	Balance
01-Jan-21	\$360.00	\$0.00	\$500.00
01-Feb-22	\$360.00	\$0.00	\$1,000.00
Total	\$1,500.00	\$0.00	\$1,500.00

The Landlord stated the Tenant has not paid any rent for the months of March through July 2022. The Landlord stated he was not seeking recovery of the rental arrears from

the Tenant at this time. The Landlord stated he was unaware of the Tenant making an application for dispute resolution to dispute the 10 Day Notice.

Analysis

1. Landlord's Claim for Order of Possession

Subsubsection 20(1) and subsections 39(1) through 39(5) of the Act state:

- 20(1) *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.
- 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 52 *[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 home site to which the notice relates by that date.*

[emphasis added in italics]

The undisputed testimony of Landlord was he served the 10 Day Notice on the Tenant in-person on February 15, 2022. Pursuant to section 46(4), the Tenant had until February 20, 2022, to make an application for dispute resolution to dispute the 10 Day Notice. The Landlord stated he was unaware of the Tenant making an application to dispute the 10 Day Notice.

Based on the undisputed testimony of the Landlord, I find the Tenant owed the Landlord \$720.00 as of February 1, 2022. As such, I find the Landlord has satisfied his onus to prove, on a balance of probabilities, that the 10 Day Notice was issued for a valid reason. Pursuant to subsection 39(5), the Tenant was conclusively presumed to have accepted that the tenancy ended on the Effective Date.

Subsections 42(2) and 42(4) state:

42(2) A landlord may request an order of possession of a rental unit in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
- (b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;
- (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;
- (c.1) the tenancy agreement is a sublease agreement;
- (d) the landlord and tenant have agreed in writing that the tenancy is ended.

[...]

(4) In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 5 [*Resolving Disputes*],

- (a) grant an order of possession, and
- (b) if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.

I have reviewed the 10 Day Notice and find it complies with the section 45 form and content requirements. Pursuant to subsection 39(5)(a), I find the tenancy ended on the

Effective Date, being February 25, 2022. The Landlord requested that, if I grant an Order of Possession, that it takes effect on July 31, 2022. Pursuant to subsection 42(4)(a) of the Act, I order the Tenant provide the Landlord with vacant possession of the home site by 1:00 pm on July 31, 2022.

2. Reimbursement of Landlord's Filing Fee

As the Landlord has been successful in his claim, he may recover the \$100.00 filing fee for the Application from the Tenant pursuant to section 65(1) of the Act.

Conclusion:

I order the Tenant deliver vacant possession of the home site to the Landlord by 1:00 pm on July 31, 2022, after being served with a copy of this decision and the attached Order of Possession by the Landlord. 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.

Pursuant to section 65 of the Act, I order that the Tenant pay the Landlord \$100.00.

It is the Landlords' obligation to serve this Monetary Order on the Tenant. If the Tenant does not comply with this order, it may be filed with 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: July 13, 2022

Residential Tenancy Branch