



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding RJ DE ATH ESTATES LIMITED
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR-DR, MNR-DR, FFL

Introduction

This hearing, adjourned from a Direct Request process in which a decision is made based solely on the written evidence submitted by the landlord, dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent and utilities, pursuant to section 48;
- a monetary order for unpaid rent and utilities pursuant to section 60; and
- authorization to recover the filing fee for this application, pursuant to section 65.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:49 a.m. in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 a.m. The landlord attended the hearing and was given a full opportunity to be heard, to present sworn 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 Hearing. During the hearing, I also confirmed from the online teleconference system that the landlord and I were the only ones who had called into this teleconference.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. All parties confirmed that they understood.

The landlord testified that the tenant was sent a copy of the dispute resolution hearing package ('Application') and evidence by way of registered mail on October 21, 2022. The landlord provided the tracking information and proof of service in their evidentiary materials. In accordance with sections 81, 82, and 83 of the *Act*, I find that the tenant

had deemed served with the Application and evidence on October 26, 2022, five days after mailing. The tenant did not submit any written evidence for this hearing.

The landlord testified that the tenant was served the 10 Day Notice dated August 3, 2022 by way of registered mail. The landlord provided proof of service and tracking information in their evidentiary materials. In accordance with sections 81 and 83 of the *Act*, the 10 Day Notice was deemed served on August 8, 2022, 5 days after mailing.

Issues to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This manufactured home park tenancy began in April 2007. Monthly pad rental is currently set at \$357.62, payable on the first of the month.

The landlord served the 10 Day Notice to the tenant on August 3, 2022 as the tenant had failed to pay the rent for August 2022. The landlord testified that the tenant has since made two payments as follows: \$800.00 on September 12, 2022, and \$740.00 on November 7, 2022. The landlord confirmed that the tenant no longer owes a balance for the outstanding rent.

The landlord is seeking an Order of Possession as well as a Monetary Order for recovery of the filing fee.

Analysis

Section 39 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent the tenant may, within 5 days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch, or pay the overdue rent. I find that the tenant failed to do either of these two things, by August 13, 2022, five days after the 10

Day Notice was deemed to have been received by the tenant. Although the tenant did pay the outstanding rent, the tenant did not do this until September 12, 2022, well after the required period. Accordingly, I find that the tenant is conclusively presumed under section 39(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, August 18, 2022.

In this case, this required the tenant and anyone on the premises to vacate the premises by August 13, 2022. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession against the tenant, pursuant to section 48 of the *Act*.

As the tenant has paid the outstanding rent up to November 2022, I dismiss the landlord's application for recovery of the unpaid rent without leave to reapply.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

Conclusion

I find the landlord's 10 day Notice dated August 3, 2022 to be valid and effective as of August 18, 2022.

I grant an Order of Possession to the landlord effective two **days after service of this Order** on the tenant. Should the tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee. I issue a \$100.00 Monetary Order in favour of the landlord, which allows the landlord to recover the filing fee for this application.

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 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: November 24, 2022