



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1022108 BC LTD. (DBA: SPIRAL
MHP) and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes CNR

Introduction

On October 12, 2022, the Tenant made an Application for Dispute Resolution seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 39 of the *Manufactured Home Park Tenancy Act* (the “Act”).

The Tenant attended the hearing. In addition, D.F. and A.K. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that the Notice of Hearing package was served to the Landlord on October 28, 2022, by registered mail to the address listed as the Landlord’s address on the tenancy agreement. As well, the Tenant testified that a copy of this package was also served to D.F. on October 29, 2022, by registered to the address listed on the Notice (the registered mail tracking numbers are noted on the first page of this Decision). The Tenant stated that they did not check the tracking histories of these packages, but these packages were not returned to sender.

A.K. advised that these packages were not received, and that the only reason they had attended this hearing is because the Landlord received an automated reminder email from the Residential Tenancy Branch on November 18, 2022.

When reviewing the Tenant's Application, it appears that the Tenant noted a dispute address and an address for the Landlord that was incorrect. Neither of these addresses matched the Landlord's service address on the Notice or the tenancy agreement. Moreover, the Tenant could not explain why they noted the incorrect dispute address and service address for the Landlord on the Application. Given that the Tenant did not have any proof of service for the registered mail packages, and given that neither the Landlord nor D.F. ever received these packages, I find it more likely than not that the reason for this was because the Tenant sent these packages to the wrong address. As such, I am not satisfied that these packages have been duly served to the Landlord in accordance with Sections 82 and 83 of the *Act*. Consequently, the Tenant's Application is dismissed without leave to reapply.

Furthermore, as it was evident that the Tenant, more likely than not, used the incorrect address in the Application, the Style of Cause on the first page of this Decision has been amended to reflect the correct dispute address related to this tenancy.

The Tenant advised that their evidence was served to the Landlord by email on November 24, 2022. As well, the Tenant acknowledged that there was no prior consent with the Landlord to exchange documents by email. A.K. confirmed that this evidence was received on November 24, 2022; however, the Landlord was not prepared to respond to it as it was served late.

D.F. advised that the Landlord's evidence was served to the Tenant by email on or around November 24, 2022. She also acknowledged that there was no prior consent with the Tenant to exchange documents by email. The Tenant confirmed that this evidence was received on November 24, 2022, and that they were prepared to respond to it.

While neither party agreed in advance to exchange evidence by email, as both parties relied on this method of service, I find that this was acceptable. However, as the Tenant's evidence was served late, and not in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules"), I have excluded this evidence and will not consider it when rendering this Decision.

With respect to the Landlord's evidence, while this evidence was also served late, and not in accordance with the timeframe requirements of Rule 3.15 of the Rules, as the Tenant was prepared to respond to it, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Landlord's Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on January 1, 2020, that the rent was established at an amount of \$777.00 per month, and that it was due on the first day of each month. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

D.F. testified that the Notice was served to the Tenant on October 6, 2022, by being posted to the Tenant's door and by email. The Tenant acknowledged receiving this Notice on October 6, 2022.

D.F. and A.K. advised that the Tenant had been living in the rental unit until approximately August 2021, at which point the Tenant moved out, but allowed a roommate to occupy the rental unit. D.F. stated that there was an agreement to let this person sublet the rental unit from the Tenant, and that she collected rent directly from the sub-tenant as it was more convenient than the sub-tenant paying the Tenant, and then the Tenant paying the Landlord.

D.F. submitted that the sub-tenant emailed her on September 30, 2022, stating that she would be moving out that day. As such, the Landlord served the Notice to the Tenant for October 2022 rent to be paid. She stated that the amount of \$802.00 on the Notice was

comprised of \$777.00 in rent, and \$25.00 for a late rent fee. She confirmed that the Tenant did not pay any rent for October, November, or December 2022, and that the Tenant did not have any authority to withhold the rent. A.K. referred to the rental ledger submitted as documentary evidence to support this claim that no rent had been paid.

The Tenant acknowledged that the Notice was for them, and that the amount on the Notice was for October 2022 rent and for the respective late fee. The Tenant confirmed that there was an agreement with the Landlord to allow for a sublet of the rental unit, and that the rent would be paid directly by the subtenant to the Landlord out of convenience. The Tenant acknowledged that the subtenancy ended and that they were then responsible for October 2022 rent.

As the Tenant was out of the country, they were not able to pay the rent to the Landlord directly, so they sent the money to a friend of theirs on October 10, 2022. However, this person did not pay the rent to the Landlord by October 11, 2022, to cancel the Notice. In fact, the Tenant confirmed that rent for October, November, and December 2022 were not paid at all, and that they did not have any authority to withhold the rent.

The Tenant testified that their friend attempted to pay the rent to the Landlord, and “presumed” that this attempt was done at least a “week after October 11, 2022.” As well, the Tenant claimed that the Landlord extended the timeframe to pay the rent to October 14, 2022, by way of an email sent October 7, 2022. However, if any documentary evidence was submitted to corroborate this, it was not accepted as per above. In addition, the Tenant could not testify to the specific date that this person allegedly attempted to pay the rent to D.F.

D.F. advised that the Landlord never authorized an extension for the Tenant to pay the rent. A.K. advised that the Landlord did send an email to the Tenant on October 14, 2022, but this was simply a reminder that the rent was still unpaid.

The Tenant made submissions on a whole host of other issues; however, none of these were relevant to the Notice. Moreover, it should be noted that due to likely technical difficulties on the Tenant’s part, the Tenant exited the hearing unceremoniously on approximately five separate occasions. The hearing would continue without the Tenant’s participation, and the Tenant would eventually dial back into the hearing. This was primarily the reason for the delay and the extended hearing time. However, despite these interruptions, the Tenant was given ample and sufficient opportunities to make relevant submissions with respect to the Notice.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 45 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form. When reviewing this Notice, I am satisfied that it is a valid Notice.

Section 20 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 39 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant received the Notice on October 6, 2022. According to Section 39(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this Notice. Section 39(5) of the *Act* states that *"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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Notice was received on October 6, 2022, the Tenant must have paid the rent in full or disputed the Notice by October 11, 2022, at the latest. However, the undisputed evidence is that the Tenant did not pay the rent in full by October 11, 2022, and disputed this Notice on October 12, 2022. As there is no evidence before me that the Tenant had a valid reason under the *Act* for withholding the rent, I am satisfied that the *Act* was breached and that this jeopardized the tenancy.

As above, as I am not satisfied that the Tenant served the Notice of Hearing package to the Landlord, I have dismissed this Application without leave to reapply. Furthermore, as the Tenant disputed this Notice a day late, on October 12, 2022, this is another reason that this Application is dismissed without leave to reapply.

Moreover, as the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 81 of the *Act*, and as the Tenant has not complied with the *Act* by paying the rent by October 11, 2022, I find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 39 and 48 of the *Act*. Consequently, I grant the Landlord an Order of Possession that takes effect on **December 31, 2022 at 1:00 PM** after service of this Order on the Tenant.

With respect to the rent that is owed, based on the undisputed evidence before me, I grant the Landlord a monetary award in the amount of **\$2,331.00** for the outstanding rental arrears from October 1, 2022, up to the end of December 31, 2022, pursuant to Section 48 of the *Act*.

Pursuant to Section 60 of the *Act*, I grant the Landlord a Monetary Order as follows:

Calculation of Monetary Award Payable by the Tenant to the Landlord

Item	Amount
Rental arrears for October 2022	\$777.00
Rental arrears for November 2022	\$777.00
Rental arrears for December 2022	\$777.00
Total Monetary Award	\$2,331.00

Conclusion

Based on the above, the Tenant's Application is dismissed without leave to reapply. I grant an Order of Possession to the Landlord effective on **December 31, 2022 at 1:00 PM after service** 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.

The Landlord is also provided with a Monetary Order in the amount of **\$2,331.00** in the above terms, and 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: December 1, 2022

Residential Tenancy Branch