



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

A matter regarding 312280 BC LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

Pursuant to section 51 of the Manufactured Home Park Tenancy Act (the Act), I was designated to hear an adjourned *ex parte* application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to sections 39 and 48; and
- a monetary order for unpaid rent, pursuant to section 60; and
- an authorization to recover the filing fee for this application, under section 65.

The applicant, represented by agent JM (the landlord), and respondent WM (the tenant) attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing all the parties were clearly informed of the Rules of Procedure, including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11, which prohibits the recording of a dispute resolution hearing. All the parties confirmed they understood the Rules of Procedure.

Per section 87(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: “A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000.”

The landlord affirmed that she emailed the notice of hearing and the interim decision to the tenant on November 08, 2022 using the email address provided in a text messaged by the tenant: “Okay would you be able to maybe resend them sorry I’m not able to find them. Here’s my email again in case that was it [redacted]. Thanks.”

The tenant affirmed that he did not receive the notice of hearing and the interim decision. The tenant received an automatic email from the Residential Tenancy Branch

and learned about this hearing. The tenant affirmed he did not authorize the landlord to serve documents via email and that the landlord could contact her using the email provided, but not serve notices of hearing.

The interim decision dated November 7, 2022 (the interim decision) states:

I order that the direct request proceeding be reconvened in accordance with section 67 of the Act. I find that a participatory hearing to be conducted by an arbitrator appointed under the Act is required in order to determine the details of the applicant's claim.

Notices of Reconvened Hearing are enclosed with this interim decision. The applicant must serve the Notice of Reconvened Hearing, the interim decision, and all other required documents, upon the tenant within three (3) days of receiving this decision in accordance with section 82 of the Act.

Section 82(2)(f) of the Act states:

An application by a landlord under section 48 [order of possession for the landlord], 49 [application for order ending tenancy early] or 49.1 [order of possession: tenancy frustrated] must be given to the tenant in one of the following ways:
[...]
(f) by any other means of service provided for in the regulations.

Manufactured Home Park Tenancy Regulation (the Regulation) 59(3) states:

For the purposes of section 82 (2) (f) of the Act, the documents described in section 82 (2) of the Act may be given to a tenant by emailing a copy to an email address provided as an address for service by the tenant.

Based on the text message and the tenant's testimony, I find the tenant did not authorize the landlord to serve notices of hearing under section 82(2)(f) of the Act and Regulation 59(3) via email.

Thus, I find the landlord did not serve the notice of hearing in accordance with section 82(2)(f) of the Act. The hearing cannot proceed fairly when the respondent has not been notified of the hearing.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

The tenant confirmed his current address for service (recorded on the cover page of this decision).

Conclusion

I dismiss the landlord's application with 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: March 03, 2023

Residential Tenancy Branch