



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR-DR, MNR-DR, FFL

Introduction

The Landlord filed an Application for Dispute Resolution on February 3, 2023 seeking an order of possession of the manufactured home site. Additionally, they applied for the unpaid rent amounts, and the cost of the Application filing fee. The Landlord's Application here was filed initially as a Direct Request. The matter proceeded by way of a participatory hearing because this Direct Request Application cannot be considered by that method where an adjudicator reviewed the matter and could not proceed based on tenancy agreement information.

The matter proceeded by way of a hearing pursuant to s. 67(2) of the *Manufactured Home Park Tenancy Act* (the "*Act*") on January 30, 2023. The Landlord attended the hearing. One of the Tenants (hereinafter, the "Tenant") also attended. At the outset of the hearing, I provided the Landlord the opportunity to ask questions on the hearing process.

Preliminary Issue – Landlord's Notice of Dispute Resolution Proceeding

To proceed with this hearing, I must be satisfied that the Landlord made reasonable attempts to serve the Tenant with the Notice of Dispute Resolution Proceeding for this hearing. This means the Landlord must provide proof that they served the document using a method allowed under s. 82 of the *Act*, and I must accept that evidence.

The Landlord originally notified the Tenant of the Direct Request proceeding via registered mail on February 7, 2023. To show this, the Landlord provided registered mail receipts, images of the tracking number labels, and a completed form to the Residential Tenancy Branch showing this information.

When the hearing method reverted to a participatory hearing, the Landlord notified the Tenant by sending the Notice of Dispute Resolution Proceeding to the Tenant on March 30, 2023. To show this, the Landlord provided registered mail receipts, images of the registered mail labels, and completed forms showing this information.

In the hearing, the Landlord described the manufactured home site having a designated mailbox. This is the mailing address they used, having no other information in place.

The Tenant stated they “would have a key” and they check this mailbox “once in a while”. The Tenant had to contact the Residential Tenancy Branch, on June 14, 2023, after hearing directly from the Landlord about the hearing.

I find the Landlord provided required documentation about their Direct Request, as well as the scheduled hearing, to the Tenant via registered mail. This is a requirement as per s. 52(3) of the *Act*. I find the Landlord fulfilled this requirement via registered mail, for both notices to the Tenant, as per s. 82(1)(c) of the *Act*. I find this included the Landlord’s prepared evidence, required as per the *Residential Tenancy Branch Rules of Procedure*. I include all evidence the Landlord provided to the Tenant and the Residential Tenancy Branch for my decision in this matter.

Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent pursuant to s. 48 of the *Act*?

Is the Landlord entitled to recovery of unpaid rent amounts, pursuant to s. 48(4) of the *Act*?

Is the Landlord entitled to recover the filing fee for this Application pursuant to s. 65 of the *Act*?

Background and Evidence

This matter proceeded to a hearing because an adjudicator on March 27, 2023 found that the tenancy agreement provided by the Landlord was not signed by the Tenant.

For this hearing, the Landlord provided a copy of an earlier tenancy agreement for the manufactured home site, signed by the previous tenants on April 14, 2014. This established that the rent amount was \$300. The final page of the document bears a note: "tenancy agreement from the seller was never assigned to the current owners [Tenant name]".

In the evidence, the Landlord provided a document titled "Assignment of Site Lease and Non-disturbance Agreement." The Landlord's note provides that this was provided to them by the bank on April 5, 2023. The document identifies the same manufactured home site by number, and notes the date of security agreement as September 21, 2021, and the principal sum of the manufactured home purchase. This identifies the "Borrower's Obligation" (*i.e.*, the Tenant): "The Borrower will observe and perform all its obligations under (a) the Site Lease, and (b) the Security Agreement." The Landlord is named as such on this document.

In the hearing, the Landlord confirmed the Tenant purchased the manufactured home in 2021. They stated there was no tenancy agreement in place with the Tenant, and this situation "should have been an assignment, but it was never done". Regarding the document "Assignment of Site Lease and Non-disturbance Agreement", the Landlord stated this document in particular was not a tenancy agreement, and only completed for the purposes of a loan from the bank.

The Tenant in the hearing stated their understanding that when they purchased the trailer, they had a document with the Landlord's signature on it.

The Landlord presented they did not receive rent from the Tenant for an extended period from July 2022 through to April 2023. The Tenant caught up on late rent amounts that had accumulated through 2022 and early 2023, in the amounts of \$800 (on June 23, 2022), and \$3,300 on April 17, 2023. The Landlord issued "use and occupancy only" receipts for these amounts only.

The Landlord issued the 10-Day Notice to End Tenancy for Unpaid Rent (the "10-Day Notice") on December 1, 2022. This was for the rent amount of \$1,840 due on November 1, 2022.

The Landlord served the 10-Day Notice to the Tenant via registered mail on December 1, 2022 as shown in the post office receipt bearing a tracking number for that same date. The Landlord provided an image of the envelope that the postal service returned to them because it was unclaimed by the Tenant.

The Tenant presented that they did not realize the rent owing was so far behind. They acknowledged that some amounts of rent were withheld because the Landlord broke a window on their manufactured home.

In the hearing, the Landlord verified that the Tenant paid the complete unpaid rent amounts as of the date of the hearing. The Landlord gave a run-through of all amounts owing, then paid by the Tenant, with the final amount of \$349 paid on June 5, 2023.

Analysis

The *Act* s. 1 defines “tenancy” as “a tenant’s right to possession of a manufactured home site under a tenancy agreement.” A “tenancy agreement” means

an agreement, whether written or oral, express or implied, between a landlord and a tenancy respecting possession of a manufactured home site, use of common areas and services and facilities

I find an agreement exists between the Landlord and the Tenant; however, this was not documented on a written agreement. I find it more likely than not that the Tenant was aware of the rent amount for the manufactured home site from when they purchased the manufactured home in 2021. In the hearing, the Landlord stated that the Tenant provided rent amounts, in the amount of \$300 per month, on October 1, 2021. This was after the Tenant’s purchase.

The Landlord presented that the “Assignment of Site Lease and Non-disturbance Agreement” does not stand as a tenancy agreement. I agree with this summation by the Landlord; however, I find it is evidence of an acknowledgement between the parties of a tenancy and that the tenancy agreement was assigned. This is as per s. 28 of the *Act*. I find that the Landlord, by signing his name to this document, acknowledged this assignment of the tenancy agreement to the Tenant.

It is inconceivable that the Tenant did not know about the need to pay rent for the manufactured home site, the amount, who to pay it to, and when. I find it more likely than not that a tenancy between the parties existed; in summary this is based on the early pattern of payment by the Tenant to the Landlord for manufactured home site rent. The Tenant was obligated to comply with the tenancy agreement; this includes any rent increase the Landlord imposed after later 2021.

The Tenant provided that they withheld rent because of some disagreement; I find this is also acknowledgment that a tenancy was in place. The Tenant did not present explicitly that there was no tenancy agreement; therefore, I find they agree that there was an agreement in place between the Landlord and the Tenant.

The Landlord served the 10-Day Notice on December 1, 2022. They served this via registered mail. As above, I accept that the Landlord sent the registered mail to the Tenant's address. This is what is required as per the *Act*. I will not ignore the Landlord's legal rights because the Tenant chose to never check their mailbox. As per the *Act*, the Landlord effected legal service of a notice to end tenancy in a correct and authorized method.

I accept the evidence before me that the Tenant failed to pay the rent as required, in full, by December 10, 2022, within the five days granted under s. 39(4) of the *Act*, and accounting for a deemed service date for December 5, 2022 as per s. 83(a). The Tenant likewise did not dispute the 10-Day Notice within that five-day period.

Based on the foregoing, I find that the Tenant is conclusively presumed under s. 39(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10-Day Notice. By my application of s. 46(2), I deem the effective date of the 10-Day Notice to be December 11, 2022.

The form and content of the 10-Day Notice conform with the requirements of s. 45. In line with this, under s. 48 of the *Act*, I grant the Landlord the Order of Possession. The tenancy will end upon the Landlord's service of the Order of Possession.

As stated by the Landlord in the hearing, there is no extant amount of rent owing; therefore, I grant no compensation for rent.

The Landlord was successful in this Application; therefore, I grant reimbursement of the Application filing fee in full.

Conclusion

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, the Landlord may file this Order at the Supreme Court of British Columbia, where it will be enforced as an Order of that Court.

I order the Tenant to pay the Landlord the amount of \$100.00 for the filing fee. I grant the Landlord a monetary order for this amount. This monetary order may be filed in the Provincial Court (Small Claims) 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 s. 9.1(1) of the *Act*.

Dated: June 21, 2023

Residential Tenancy Branch