



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on the Notice to End Tenancy for Unpaid Rent dated January 27, 2009, a monetary order for rent owed and to recover the filing fee.

Service of the hearing documents was done in accordance with section 82 of the *Manufactured Home Park Tenancy Act*, sent via registered mail on March 13, 2009. The tenant was deemed to be served the hearing documents on March 18, 2009, the fifth day after they were mailed.

Representatives for the applicant and respondents appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally, in written form, documentary form, and make submissions to me.

Issue(s) to be Decided

The landlord is seeking an Order of Possession. The landlord is also seeking a monetary order claiming unpaid rent of \$4,725.75 for accrued pad rental arrears since April 1, 2008 owed by the tenants.

The issues to be determined based on the testimony and the evidence are:

Whether or not the landlord is entitled to an Order of Possession based on the 10-Day Notice to End Tenancy for Unpaid Rent

Whether or not the landlord is entitled to monetary compensation for rental arrears owed and recovery of the filing fee

Preliminary Issues

The tenants testified that they were married on July 26, 2008 and that the female tenant changed her surname and began using her spouses last name.

Background and Evidence

The landlord testified that the tenancy began September 01, 2003, the tenants paid a security deposit of \$90.00 on September 05, 2003, and pad rental as of March 1, 2009, is \$423.25 due on the first of each month.

The landlord entered into evidence a copy of the tenants' payment history which displays that the tenants have a history of paying their pad rental late and the current balance owing of \$4,725.75 consists of late payment fees at \$20.00 per month and rental arrears. The total arrears are a result of late payments which began on April 01, 2008. The evidence shows that between the periods of April 01, 2008 to March 01, 2009, the tenants have made only one payment on June 05, 2008 of \$428.25.

The landlord testified that a 10 Day Notice to End Tenancy was issued on January 27, 2009 and posted on the tenants' door on January 29, 2009. The landlord advised that the tenants have not moved and the landlord has requested an Order of Possession.

The tenants testified that their financial representative contacted the landlord to make a payment arrangement on behalf of the tenants but the landlord refused.

The landlord testified that she had contacted the tenants' financial representative February 3, 2009, to inform them of the notice to end tenancy and that it was not until approximately one week ago (March 16-20, 2009) when the tenants' financial representative called to offer the landlord a payment arrangement on behalf of the

tenants. The landlord stated that she refused the offer of a payment plan and wishes to proceed with the Order of Possession.

The tenants advised that it was always their intention to pay their pad rental, however were not able to do so given their financial hardship.

Analysis

Order of Possession - Based on the testimony of the landlord, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent by posting it on the door. The tenant did not pay the outstanding rent within five days of receiving the Ten-Day Notice to end Tenancy and did not apply to dispute the Notice and is therefore conclusively presumed under section 48(2)(b) of the *Act* to have accepted that the tenancy ended on the effective date of the notice. Based on the above facts I find that the landlord is entitled to an Order of Possession.

Monetary Claim – Unpaid Rent - Pursuant to section 20(1) of the *Act*, tenants must pay rent when it is due under the tenancy agreement. Landlords are entitled to charge non refundable fees for late payment of rent pursuant to the *Manufactured Home Park Tenancy Regulation* section 5(d). I find that the landlord is entitled to receive the rental arrears and late payment fees of \$4,725.75.

Filing fee - \$50.00. I find that the landlord has succeeded in large and that she should recover the filing fee from the tenant.

Conclusion

I hereby issue an Order of Possession in favour of the landlord effective two days after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I find that the landlord's claim meets the criteria of the *Act* and order this monetary claim to be offset against the tenants' security deposit of \$90.00 plus interest calculated to March 30, 2009 of \$3.19 as follows

Unpaid Rent and late payment fees	\$4725.75
Recovery of Filing Fee	50.00
Less tenants' security deposit and interest (\$90.00 + 3.19)	-93.19
TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD	\$ 4,682.56

I hereby grant the landlord a Monetary Order under section 60 of the *Manufactured Home Park Tenancy Act* for \$4,682.56 This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord's copy of this decision is accompanied by the Order of Possession and the Monetary Order. Both Orders must be served on the respondents.

March 26, 2009

Date of Decision

Dispute Resolution Officer