



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0730751 BC Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, FF

Introduction:

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, and to recover the fee for filing an Application for Dispute Resolution. It is apparent from information included on the Application for Dispute Resolution that the Landlord is also seeking compensation for late fees and the Application has, therefore, been amended to include a claim for a monetary Order for money owed or compensation for damage of loss.

The Agent for the Landlord stated the Application for Dispute Resolution and Notice of Hearing were sent to the Tenant at the rental site, via registered mail, on April 04, 2013. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 82 of the *Manufactured Home Park Tenancy Act (Act)*, however the Tenant did not appear at the hearing.

The Agent for the Landlord stated an amended Application for Dispute Resolution and documents the Landlord wishes to rely upon as evidence were sent to the Tenant at the rental site, via registered mail, on April 10, 2013. The Landlord submitted Canada Post documentation that corroborates this statement. In the absence of evidence to the contrary, I find that these documents have been served in accordance with section 81 and 81 of the *Act*.

Issue(s) to be Decided:

Is the Landlord entitled to an Order of Possession for unpaid rent and to a monetary Order for unpaid rent and/or late fees?

Background and Evidence:

The Agent for the Landlord stated that this tenancy began prior to the Landlord purchasing the property in 2006; that she believes there is a written tenancy agreement for the site but it was not submitted in evidence and she does not currently have it in her possession; that the Tenant is currently required to pay monthly rent of \$305.00 for the site by the first day of each month; and that the rent is in arrears by \$2,500.00.

The Landlord submitted a copy of a rent schedule that shows the rent was overdue by \$760.00 on July 26, 2012. The Agent for the Landlord stated that this debt was all for rent, as only one late fee of \$25.00 had been applied prior to that date, which is not included in the \$760.00 total. The rent schedule shows that rent of \$1,740.00 is overdue for the period between August 01, 2013 and April 30, 2013.

The Agent for the Landlord stated that a Ten Day Notice to End Tenancy for Unpaid Rent, which had an effective date of April 13, 2013, was sent to the Tenant, via registered mail, on March 28, 2013. The Landlord submitted Canada Post documentation that corroborates this statement. The Notice, which was dated March 28, 2013, declared that the Tenant had failed to pay rent of \$2,315.00 that was due on March 01, 2013.

The Landlord is seeking \$200.00 in late fees as a result of the Tenant not paying rent on time between July 01, 2012 and April 01, 2013. The Agent for the Landlord stated that the park rules authorize the Landlord to collect a fee of \$25.00 whenever the rent is not paid when it is due. A copy of the rules were not submitted in evidence. The Agent for the Landlord stated that the tenancy agreement does not require the Tenant to pay a fee when rent is not paid when it is due.

Analysis

On the basis of the undisputed evidence, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to currently pay monthly rent of \$305.00 by the first day of each month.

Based on the testimony of the Agent for the Landlord and the rent schedule, I find that the Tenant owes rent for the period ending April 30, 2013, in the amount of \$2,500.00. As she is required to pay rent pursuant to section 20(1) of the *Act*, I find that the Tenant must pay \$2,500.00 in outstanding rent to the Landlord.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 39 of the *Act*. On the basis of the undisputed evidence, I find a Ten Day Notice to End Tenancy, which directed the Tenant to vacate the rental unit by April 13, 2013 was mailed to the Tenant on March 28, 2013

Section 39 of the *Act* stipulates that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does

not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 39(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

Section 5(1)(d) of the *Manufactured Home Park Tenancy Regulation* stipulates that a landlord can charge a fee of not more than \$25.00 for a late rent payment. Section 5(2) of the *Regulation* stipulates that a landlord can only charge this fee if the tenancy agreement provides for that fee. As the Landlord has submitted no evidence to show that the tenancy agreement requires the Tenant to pay a late fee of \$25.00 or that the tenancy agreement requires the Tenant to comply with the park rules, I find that the Landlord has submitted insufficient evidence to show that the Tenant is obligated to pay late fees. I therefore dismiss the landlord's application for late fees.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

The Landlord has established a monetary claim, in the amount of \$2,550.00, which is comprised of \$2,500.00 in unpaid rent and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution and I grant the Landlord a monetary Order for this amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, filed with the Province of British Columbia Small Claims 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 *Residential Tenancy Act*.

Dated: May 01, 2013