



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VISTA VILLAGE TRAILER PARK LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) under the *Manufactured Home Park Tenancy Act* (the “Act”) by the landlord for an order of possession for unpaid site rent, for a monetary order for unpaid site rent and to recover the cost of the filing fee. The landlord’s Application also includes a monetary claim for non-sufficient funds fees (the “NSF fees”) and late fees pursuant to the tenancy agreement.

Two agents for the landlord, (the “agents”), appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agents were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), Application and documentary evidence were considered. The agents testified that the tenant was served with a package that included the Notice of Hearing, Application and first part of the documentary evidence on November 1, 2016, via registered mail addressed to the tenant at the rental site address. The agents testified that the tenant continues to occupy the rental site. A registered mail tracking number was submitted in evidence. The agent stated that the registered mail package was returned as “unclaimed”. Documents served by registered mail are deemed served five days after they are mailed pursuant to section 83 of the *Act*. Based on the above, I am satisfied that the tenant was deemed served with the Notice of Hearing, Application and first part of the documentary evidence as of November 6, 2016.

The agents also testified that a second registered mail package containing the second part of the landlord’s documentary evidence was mailed to the tenant by registered mail on November 7, 2016 and addressed to the tenant at the rental unit address. A

registered mail tracking number was submitted in evidence. The agent stated that the registered mail package was returned as “unclaimed”. Based on the above, I find the tenant is deemed served with the second registered mail package as of November 12, 2016. The registered mail tracking numbers have been included on the cover page of this decision for ease of reference.

Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

Background and Evidence

The tenancy agreement was submitted in evidence. A month to month tenancy began on February 15, 2010. Monthly site rent was originally \$300.00 per month and due on the first day of each month. The agents stated that during the tenancy, the monthly site rent increased under the *Act* to the current monthly site rent amount of \$365.00.

The agents confirmed service of the 10 Day Notice for Unpaid Rent or Utilities dated October 3, 2016 (the “10 Day Notice”) which was mailed to the tenant via registered mail and signed for by the tenant on October 5, 2016. The 10 Day Notice listed \$365.00 owing due July 1, 2016, and had an effective vacancy date of October 19, 2016. The agents stated that the tenant failed to pay any rent for the months of July 2016 and September 2016 and that the manufactured home remains on the rental site. The agents stated that the tenant did not dispute the 10 Day Notice. The agents stated that any money accepted from the tenant since has been followed by a receipt for “use and occupancy only” by the landlord and that the landlord has not reinstated the tenancy by accepted money for use and occupancy. In addition, the agents stated that while they have been patient with the tenant she continues to owe the following amount which is the total monetary claim of the landlord:

ITEM DESCRIPTION	AMOUNT CLAIMED
Item 1. NSF fee for March 2015	\$25.00
Item 2. NSF fee for September 2015	\$25.00
Item 3. Unpaid July 2015 site rent	\$365.00
Item 4. NSF fee for July 2015	\$25.00
Item 5. Late fee for July 2015	\$25.00
Item 6. Loss of September 2015 site rent	\$365.00

Item 7. Late fee for September 2016	\$25.00
Item 8. NSF fee for September 2016	\$25.00
Item 9. Recovery of cost of filing fee	\$100.00
TOTAL	\$980.00

The agents testified that for items 1 and 2, the tenant had failed to pay the landlord two NSF fees of \$25.00 each dating back to March 2015 and September 2015 and that the landlord has not yet claimed for these fees under the *Act*.

Regarding the remaining items, the agents referred to section 3 of the tenancy agreement which indicates that a late fee of \$25.00 will be charged for all late payments of rent and that an NSF fee of \$45.00 will be charged, although the landlord assessed a \$25.00 fee per NSF cheque returned instead of \$45.00 as indicated on the tenancy agreement. The agents' testimony was consistent with the amounts claimed above.

Analysis

Based on the undisputed documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

Order of Possession – I find that the tenant failed to pay the site rent for the month of July 2016 as claimed or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. As a result, the tenant is conclusively presumed pursuant to section 39 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice which was October 19, 2016. Accordingly, I grant the landlord an order of possession **effective two (2) days after service on the tenant**.

Claim for unpaid site rent, late fees and NSF fees – The agent testified that site rent of \$365.00 for the month of July 2016 was not paid by the tenant and that the landlord has also suffered a loss of September 2016 site rent. The landlord has claimed late fees of \$25.00 for the months of July 2016 and September 2016 and NSF fees for the months of March 2015, September 2015, July 2016 and September 2016. Pursuant to section 20 of the *Act*, a tenant must pay site rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that site rent is due monthly on the first of each month. The rental site continues to be occupied as a manufactured home remains on the rental site. The landlord will not regain possession of the unit until for their full monetary amount as claimed. Based on the above, I find the landlord has

established a monetary claim of **\$880.00** comprised of unpaid site rent, loss of site rent, late fees and NSF fees as claimed.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee.

Monetary Order – I grant the landlord a monetary order pursuant to section 60 of the *Act* in the amount of \$980.00 as described above.

Conclusion

The landlord's claim is fully successful. The tenancy ended on October 19, 2016 and the tenant has been over-holding the rental site since that date.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted a monetary order under section 60 of the *Act* in the amount of \$980.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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, 2016

Residential Tenancy Branch