



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Aldridge Custom Holes Ltd and
[tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPRM-DR, FFL, CNR, FFT

Introduction

This was a cross application hearing that dealt with the landlord's direct request application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- an Order of Possession for unpaid rent, pursuant to section 55;
- a Monetary Order for rent, pursuant to section 67; and
- authorization to recover the filing fee for this application, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- cancellation of the 10 day Notice for Unpaid Rent or Utilities (the "Notice"), pursuant to section 46; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's representatives RJ and SK (the landlords) and landlords' advocate AP attended the hearing. Tenant JL (the tenant) and tenant's advocate DD, and the tenant's witnesses MP and FP also attended the hearing. Both parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

As both parties were in attendance, I confirmed that there were no issues with services of both applications for dispute resolution and evidence. Both parties confirmed receipt of each other's application package. In accordance with sections 88 and 89 of the *Act*, I find that both landlord and tenant were duly served with the applications and evidence.

The tenant affirmed she did not receive the letters dated April 26 and June 22, 2019. These documents were excluded and are not mentioned in this decision, per Rule of Procedure 3.17.

Preliminary Issue – Landlord’s Amendment of Claim

At the hearing the landlord sought to amend his application for \$1,200.00 in unpaid rent to include an additional \$1,100.00 for the unpaid balance of rent in January and February 2020.

The increase in the landlord’s monetary claim for unpaid rent should have been reasonably anticipated by the tenants. Therefore, pursuant to section 4.2 of the Rules and section 64 of the Act, I amend the landlord’s monetary claim for unpaid rent to \$2,300.00.

Preliminary Issue – tenancy under the Act

Both parties agreed the rental unit in this dispute is a manufactured home, not a site for a manufactured home.

Section 4 of the Manufactured Home Tenancy Act states:

This Act does not apply with respect to any of the following:

(a) a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant;

Section 2 and 4 of the Residential Tenancy Act states:

2 (1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.

(4) This Act does not apply to
[...]

(j) tenancy agreements to which the Manufactured Home Park Tenancy Act applies...

Although the parties signed a Mobile Home Site Tenancy Agreement, the tenancy is regulated by the Residential Tenancy Act, not the Mobile Home Tenancy Act.

Issues to be Decided

- Is the tenant entitled to an order for the cancellation of the landlord's notice, pursuant to section 46?
- Is the tenant entitled to recover the filing fee for this application from the tenant, pursuant to section 72?
- Is the landlord entitled to an Order of Possession, pursuant to section 55?
- Is the landlord entitled to a monetary award for unpaid rent, pursuant to section 67?
- Is the landlord entitled to recover the filing fee for this application from the tenant, pursuant to section 72?

Background and Evidence

While I have turned my mind to the accepted evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of both parties' claims and my findings are set out below. I explained to the parties it is their obligation to present their evidence.

The parties agreed the monthly tenancy started in August 2017, monthly rent is due on the first day of the month and there was no security nor pet damage deposit. A copy of the tenancy agreement with a one-page addendum was entered into evidence. The tenancy agreement has a handwritten remark "1350-550=800" and indicates the monthly rent is \$800.00. The parties also agreed the Notice was served in person on November 08, 2019.

The landlord testified the monthly rent is \$1,350.00. However, both tenants agreed to work as maintenance supervisors and as payment for their services they received a discount of \$550.00 in their rent, thus reducing the rent to \$800.00 per month while they were working on the manufactured home site. The tenants were responsible for cutting the grass, shoveling the snow, general maintenance of the site and collecting rent.

The one-page addendum states:

1. All yard work and maintenance of ground will be the sole responsibility of GL. This included grass cutting, tree pruning, snow removal from driveways and other general grounds maintenance;
2. Any necessary repairs that need to be done in any unit, will be done in a timely manner;
3. [...]
4. [...]

5. GL will provide and use his own equipment for yard and all ground maintenance;
6. Snow removal equipment will be provided by or arranged by the owner;

The landlord also affirmed the tenants stopped working around September 2019 and because of this they have to pay the full amount of rent (\$1,350.00 per month, instead of \$800.00). The tenants continued to pay only \$800.00 and are in arrears \$2,200.00 (\$550.00 per month for the months of November and December 2019 and January and February 2020).

The landlord affirmed he charges market rate rent and witnesses MP and FP had conflicts with him when they were tenants and are scheduled for another dispute resolution hearing in the future.

The landlord submitted a copy of the Notice, dated November 08, 2019, for \$1,350.00 in unpaid rent. The effective date is November 18, 2019. A Direct Request Worksheet (RTB form 46) was provided.

The tenant affirmed there was no offer of employment and the one-page addendum has no indication of any monetary amount for payment. Rent is \$800.00 per month, and has been this amount since they moved in 2017. There are no arrears, as every month they pay \$800.00.

The tenant affirmed they worked from the outset of the tenancy until September 2019. The tenant's husband GL did yard work and general maintenance. The tenant collected rent from all the tenants, writing receipts and depositing the cheques in the bank. The tenant's husband worked around 30 to 35 hours per week and the tenant worked a couple of hours per week. They stopped working because GL developed health problems. Both of them worked for free to the landlord because they are kind to the landlord.

The tenant testified the landlord told her when the tenancy agreement was signed that the market rate for the rent was \$1,350.00 per month, but the landlord, out of kindness, reduced it to \$800.00 per month to help the local residents to have affordable housing.

Witness MP testified she moved in August 2017 and moved out in August 2019. The tenants were the individuals all other residents had to contact when there was any maintenance issue regarding the site. Her rent was \$850.00 per month for a similar size unit. The landlord explained to her, when their tenancy agreement was signed that the market rate was \$1,350.00 but he was charging only \$850.00 per month to help the local residents to have affordable housing. Her tenancy agreement has a similar

handwritten notice about the cost of rent. That tenancy agreement was not entered into evidence.

The landlord affirmed, after MP's testimony, that her unit was smaller, and about 50 years old and the unit of the tenants was only about 5 years old.

The tenants previously applied for Dispute Resolution and had a hearing on January 07, 2020 (the file number is mentioned on the cover page of this decision). That application was dismissed with leave to reapply and no extension to the timeline to dispute the notice was granted. A copy of the decision was uploaded as evidence.

Analysis

Cancellation of the Notice

I have reviewed all the documentary evidence and find the tenants were served with the Notice on November 08, 2019 in accordance with sections 88 (a) of the Act. I find the form and content of the Notice is valid pursuant to section 52 of the Act.

Although the tenants disputed the Notice in the previous application this did not give them any additional time to dispute the notice. The current tenant's application was filed on January 20, 2020. The five-day deadline to dispute that Notice was November 13, 2019.

The tenants did not dispute the Notice before the deadline and are conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice, November 18, 2019.

Unpaid rent

Section 26 of the Act requires that a tenant pay rent when it is due under the tenancy agreement.

The amount of rent is a contested point. Both parties agreed the tenants stopped working around September of 2019. The landlord affirms he is entitled to receive the monthly rent of \$1,350.00 and the tenant affirms rent was always \$800.00.

I find the tenant's testimony that she worked a couple of hours per week and her husband worked between 30 to 35 hours per week from August 2017 to September

2019 without compensation to have little credibility. I also find the testimony of both the tenant and the tenant's witness that the landlord provided rents below market rate to help the local residents to have affordable housing to have little credibility.

The fact the manufactured home of the tenants is about 5 years old, and the witness MP's is about 50 years old is a reasonable explanation of the similarity of their monthly rental amounts.

The handwritten remark in the tenancy agreement ("1350-550=800") is in accordance with the landlord's testimony that the tenants received remuneration in the form of a \$550.00 per month rent reduction, paying only \$800.00 per month while they were working.

As such, I find the tenants' rent is \$1,350.00 per month effective November 1, 2019 and the tenants are in arrears \$2,200.00 for the last four months (November and December 2019 and January and February 2020).

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

As the tenants were not successful, they are not entitled to recover the filing fee.

In summary:

Landlord's monetary claim for unpaid rent	\$2,200.00
Landlord's filing fee	\$100.00
Total monetary award	\$2,300.00

Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this order** on the tenants. Should the tenants fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

Pursuant to sections 67 and 72 of the *Act*, I grant the landlord a Monetary order in the amount of \$2,300.00.

The landlord is provided with this order in the above terms and the tenant must be served with **this order** as soon as possible. Should the tenants fail to comply with this

order, this order may be filed in the Small Claims Division of the Provincial 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: February 27, 2020

Residential Tenancy Branch