



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PARKBRIDGE LIFESTYLE COMMUNITIES
INC and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR-DR-PP, OPRM-DR, FFL

Introduction

This hearing dealt with an Application for Dispute Resolution (application) seeking remedy under the *Manufactured Home Park Tenancy Act* (Act) by the landlord for an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 17, 2020 (10 Day Notice, for a monetary order for unpaid site rent and loss of site rent, and to recover the cost of the filing fee.

An advocate for the named landlord, LM (advocate) and an agent for the named landlord, SF (agent) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the advocate and agent 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. Words utilizing the singular shall also include the plural and vice versa where the context requires.

As the tenant did not attend the hearing, service of the Adjourned Notice of a Dispute Resolution Proceeding dated February 5, 2021 (Adjourned Notice of Hearing), application and documentary evidence were considered. The landlord submitted a Proof of Service document that confirms that the Adjourned Notice of Hearing, application and documentary evidence was sent via registered mail on February 8, 2021 addressed to the tenant at the rental site address. The registered mail tracking number has been included on the style of cause for ease of reference. According to the online Canada Post registered mail tracking website, the registered mail package was successfully delivered on February 10, 2021. Given the above, I find the respondent was successfully served on February 10, 2021. As I am satisfied on service and the personal representative did not attend the hearing, I find this matter to be undisputed. The hearing continued with undisputed landlord's application.

I also note that this matter began as an Application for Direct Request, which was adjourned to a participatory hearing based on an Interim Decision dated February 4, 2021 (Interim Decision). The Interim Decision should be read in conjunction with this decision.

Preliminary and Procedural Matters

Firstly, the advocate requested to amend the application to read SF, Personal Representative of the Estate of VP, Deceased. Pursuant to section 57(3) of the Act, I amend the landlord's application as requested as I find that this does not prejudice the respondent as the advocate testified that SF was confirmed by counsel in January 2021 to be the personal representative of the Estate of VP, Deceased.

In addition, the advocate testified that in addition to the rent owed at the time the application was filed on January 14, 2021 the respondent has subsequently not paid site rent for January, March and April of 2021. As a result, the advocate requested to amend the application to include rent owed as of the date of the hearing, which was also mentioned in the application. The advocate also stated that the tenant continues to occupy the rental site. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 57(3)(c) of the Act, from \$3,151.42 to \$5,961.42 before the filing fee. I note that the advocate stated that they are not requesting late fees.

Also, the advocate and agent were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The advocate and agent were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the advocate and agent were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the Act. Neither the advocate nor agent had any questions about my direction pursuant to RTB Rule 6.11.

In addition to the above, the advocate confirmed the email address of the agent at the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the advocate was not aware of an email address for the tenant, the decision will be sent by regular mail to the tenant.

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?
- Is the landlord entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

The tenancy agreement was submitted in evidence. The advocate stated that tenants HB and VP were both occupying the rental unit and that HB passed away about a year prior to VP passing away. The advocate also stated that SF was confirmed as the personal representative of the VP, deceased by counsel for the Estate of the VP, deceased. The advocate also confirmed that SF is occupying the manufactured home on the rental site.

The 10 Day Notice submitted in evidence was posted to the rental unit door and was not disputed according to the advocate. The advocate stated that while some rent was paid, some cheques were NSF and that the tenant did not pay the amount owing since being served with the 10 Day Notice and as of the date of the hearing owes a total amount owing of \$5,961.42 as follows:

August 2020 rent of \$993.57 – unpaid
September 2020 rent of \$993.57 – unpaid
December 2020 rent of \$993.57 – unpaid
January 2021 rent of \$993.57 – unpaid
March 2021 rent of \$993.57 – unpaid
April 2021 rent of \$993.57 – unpaid

In addition, the landlord is seeking the recovery of the cost of the filing fee and a two-day order of possession.

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 accept the undisputed testimony of the advocate and agent and I find that the tenant failed to pay the site rent as noted on the 10 Day Notice before

me. I am also satisfied that the tenant was served with the 10 Day Notice as claimed and failed to pay the unpaid site rent 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 December 30, 2020. Accordingly, I grant the landlord an order of possession **effective two (2) days** after service on the tenant. I find the tenancy ended on December 30, 2020.

Claim for unpaid site rent and loss of rent – I accept the undisputed testimony of the advocate and agent that as of the date of the hearing, April 29, 2021, the tenant owes unpaid rent and loss of rent to the landlord in total amount of \$5,961.42 as claimed. 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 the site has been vacated. Based on the above, I find the landlord has established a monetary claim of **\$5,961.42** comprised of unpaid site rent and loss of site rent as claimed.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee pursuant to section 65 of the Act.

Monetary Order – The landlord is granted a monetary order pursuant to section 60 of the Act in the amount of \$6,061.42 as described above. This amount is comprised of unpaid site rent, loss of site rent, and the filing fee.

Conclusion

The landlord's claim is fully successful. The tenancy ended on December 30, 2020 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 \$6,061.42. 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 will be emailed to the landlord and sent by regular mail to the tenant.

The monetary order and the order of possession will be emailed to the landlord only for service on the tenant.

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: April 29, 2021

Residential Tenancy Branch