



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Ladha Enterprises L T D and [tenant
name suppressed to protect privacy]

DECISION

Dispute Codes **OPR, MNRL, FFL** _____

Introduction

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"):

- an Order of Possession for unpaid rent pursuant to section 48;
- a Monetary Order for unpaid rent pursuant to section 60; and
- authorization to recover the filing fee for this application pursuant to section 65.

The tenant did not attend this hearing which lasted approximately 10 minutes. The teleconference line remained open for the duration of the hearing and the Notice of Hearing was confirmed to contain the correct hearing information. The corporate landlord was represented by their agent (the "landlord") who was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord was made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and they testified that they were not making any recordings.

The landlord testified that they served the tenant with the notice of application and evidence by registered mail sent on May 17, 2021. The landlord submitted a valid Canada Post tracking receipt as evidence of service. Based on the evidence I find that the tenant is deemed served with the landlord's materials on May 22, 2021, five days after mailing, in accordance with sections 81, 82 and 83 of the *Act*.

At the outset of the hearing, the landlord requested to amend the amount of their monetary claim, testifying that additional rent has come due since the application was filed. Pursuant to section 61(1)(b) of the *Act* and Rule 4.2 of the Rules of Procedure I amend the landlord's Application to increase the landlord's monetary to \$4,100.00 as additional rent coming due can be reasonably anticipated.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to a monetary award as sought?

Is the landlord entitled to recover their filing fee from the tenant?

Background and Evidence

The landlord provided undisputed evidence regarding the following facts. This periodic tenancy began in 2013. The monthly PAD rent is \$500.00 payable on the first of each month.

The tenant has failed to pay the rent as required under the tenancy agreement on January, February, March and April 2021. There was a rental arrear of \$1,600.00 on April 2, 2021 when the landlord issued a 10 Day Notice to End tenancy for Unpaid Rent. A copy of the 10 Day Notice was submitted into evidence. The landlord testified that they served the 10 Day Notice by posting on the door of the manufactured home on April 2, 2021. The landlord submitted a signed and witnessed Proof of Service form as evidence of service.

The tenant has not made payment against the arrears nor have they filed an application for dispute resolution. The landlord testified that as at the date of the hearing, September 10, 2021 the total rental arrear is \$4,100.00.

Analysis

In accordance with subsection 39(5) of the *Act*, a tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, as the landlord provided undisputed evidence that the tenant was served with the 10 Day Notice by posting on April 2, 2021, I find the tenant is deemed to have been served on April 5, 2021, three days after posting in accordance with sections 81 and 83 of the *Act*.

I accept the evidence of the landlord that the tenant has not disputed the notice, nor have they paid any rent within 5 days of service or at all. Accordingly, I find that the tenant is conclusively presumed under section 39 (5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, April 15, 2021 and issue an Order of Possession, pursuant to section 48 of the *Act*. As the effective date has passed I issue an Order effective 2 days after service.

Section 60 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed evidence of the landlord that the total amount of arrears arising from rent other than Affected Rent is \$4,100.00. I issue a monetary award for unpaid rent owing in that amount, pursuant to section 60 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$4,200.00, allowing for recovery of the filing fee and unpaid rent for this tenancy. The tenant must be served with this Order as soon as possible. Should the tenant 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 *Manufactured Home Park Tenancy Act*.

Dated: September 10, 2021

Residential Tenancy Branch