



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes OPR, MNRL, MNDCL, FFL

Introduction

Pursuant to section 51 of the Manufactured Home Park Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- a monetary order for unpaid rent, pursuant to section 20;
- a monetary order for loss under the Act, the Manufactured Home Park Regulation (the Regulation) or tenancy agreement, pursuant to section 60; and
- an authorization to recover the filing fee for this application, under section 65.

I left the teleconference connection open until 2:38 pm to enable the tenants to call into this teleconference hearing scheduled for 1:30 pm. The tenants did not attend the hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

The landlord affirmed the tenants authorized her to serve documents via email in August 2022. The tenants' email address is recorded on the cover page of this decision. The landlord submitted a text message from the tenants dated August 16, 2022:

Tenant: Please just email it to me [tenant's email address referenced in the message]

Landlord: The legislation says I am to mail it to your forwarding address. I can also email it when I mail it.

Tenant: All right

The landlord stated the tenants did not provide a valid forwarding address. The landlord submitted the email sent to the tenants' email address on September 29, 2022 with the notice of hearing, the amendment and the evidence (the materials).

Based on the landlord's convincing testimony, the text message dated August 16, 2022 and the email dated September 29, 2022, I find the landlord sufficiently served the tenants the materials in accordance with section 64(2)(c) of the Act.

Per Regulation 60, I deem the tenants received the materials on October 02, 2022.

Preliminary Issue – amendment

At the hearing the landlord sought to amend the \$400.00 application for an extra \$7,200.00 for the unpaid rent of due on September, October, November, December 15, 2022, January, February, March, April and May 15, 2023.

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 of Procedure and section 57(3)(c) of the Act, I amend the monetary claim for unpaid rent to a total of \$7,600.00.

The amendment states: "I would also lie an order of possession so I can move the RV and if necessary dispose of it."

The landlord submitted a copy of the 10 Day Notice to end Tenancy (the Notice) dated August 17, 2022 into evidence.

Upon further reflection and considering section 57(3)(c) of the Act and the Notice, I amend the application to include a request for an order of possession.

Issues to be Decided

Is the landlord entitled to:

1. an order of possession?
2. a monetary order for unpaid rent?
3. an authorization to recover the filing fee?

Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained

rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord rented a manufactured home site to the tenants on July 15, 2022, when the tenants parked their recreational vehicle (the vehicle) on her property. The tenants abandoned the vehicle in August 2022 and the tenants' parents attended the vehicle in late August or early September 2022 to remove personal belongings from the tenants' vehicle. The vehicle remains parked in the property. The landlord submitted the tenancy agreement into evidence.

The landlord stated that monthly rent is \$800.00, due on the 15th day of the month.

The landlord said the tenants paid \$1,200.00 on July 15, 2022 for the rent due on July 15, 2022 and \$400.00 for the rent due on August 15, 2022.

The landlord emailed the Notice on August 17, 2022 to the tenants. The Notice states the tenants failed to pay the balance of rent of \$400.00 due on August 15, 2022. The effective date was August 28, 2022.

The landlord submitted an email dated August 17, 2022: "Attached is the Notice of Eviction as you have not paid the full rent for August 15". The tenants replied: "Why are you being so unbelievably insulting..." The landlord submitted a proof of service form indicating that she emailed the tenants the Notice on August 17, 2022 at 11:33 am.

The landlord is seeking the balance of unpaid rent due on August 15, 2022 in the amount of \$400.00 and \$800.00 per month for the unpaid rent due on September, October, November, December 15, 2022, January, February, March, April and May 15, 2023. The landlord is seeking \$7,600.00 and an order of possession.

Analysis

Based on the landlord's uncontested and convincing testimony, the emails dated August 15 and the proof of service form, I find the landlord served the Notice on August 17, 2022. Considering the tenant's response email, I find the tenants received the Notice on August 17, 2022.

Based on the landlord's convincing and uncontested testimony and the tenancy agreement, I find that the landlord and the tenants agreed to a tenancy and the tenants are obligated to pay monthly rent of \$800.00 on the 15th day of each month.

Based on the landlord's convincing and uncontested testimony and the Notice, I find the tenants did not pay the balance of rent due on August 15, 2022 in the amount of \$400.00 and the full rent due on September, October, November, December 15, 2022, January, February, March, April and May 15, 2023 (\$800.00 per month). I find the tenants owe unpaid rent of \$7,600.00.

Pursuant to section 39(1) of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

I find the form and content of the Notice complies with section 45 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states the ground to end tenancy and the effective date and it is in the approved form.

As the tenants' vehicle is currently occupying the rental unit, I find the tenancy ends on the date of this decision, per section 37(1)(f) of the Act.

As the tenants continue to occupy the rental unit, did not pay the full amount of rental arrears and did not dispute the Notice, I award the landlord an order of possession, per section 48(2)(b) of the Act.

Considering that rent has not been paid in full, and the effective date of the Notice is August 28, 2022, I order the order of possession to be effective two days after service.

Section 20(1) of the Act states that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act.

Per section 20(1) of the Act, and considering the tenancy agreement, the landlord's undisputed testimony, and the Notice, I award the landlord \$7,600.00 in unpaid rent between due between August 15, 2022 and May 15, 2023.

As the landlord was successful in this application, I authorize the landlord to recover the \$100.00 filing fee, per section 65(1) of the Act.

In summary, I award the landlord \$7,700.00.

Conclusion

Pursuant to section 48(2)(b) of the Act, 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.

Per sections 20 and 65 of the Act, I award the landlord \$7,700.00. The landlord is provided with this order in the above terms and the tenants 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 *Manufactured Home Park Tenancy Act*.

Dated: June 14, 2023

Residential Tenancy Branch