

Decision

Dispute Codes: OPR, MNR, MNDC, FF

Introduction

This is the Landlord's application for a Monetary Order; an Order of Possession, and to recover the cost of the filing fee from the Tenants.

I reviewed the evidence provided by the Landlord prior to the Hearing. The parties gave affirmed evidence and this matter proceeded on its merits.

Issue(s) to be Decided

- (1) Is the Landlord entitled to an Order of Possession?
- (2) Is the Landlord entitled to a monetary order, and if so in what amount?
- (3) Is the Landlord entitled to recover the filing fee from the Tenants?

Background and Evidence

Landlord's agent's testimony

The Landlord testified that he personally served the female Tenant with the Notice to End Tenancy for Unpaid Rent or Utilities at the Tenant's residence on September 15, 2009.

The Landlord's agent testified that he mailed both of the Tenants the Application for Dispute Resolution and hearing package on November 13, 2009, by registered mail, to the Tenants' residential address. The Landlord provided copies of the registered mail receipts and tracking numbers.

The Landlord's agent testified that:

- The tenancy began in December of 2003.
- The current monthly rent is \$742.00, due on the first day of the month.
- The Tenants started to fall behind in rent in June, 2005, and have been struggling since then to pay the rent. The Landlord considered filing an application for an Order of Possession on a few occasions, but the Tenants occasionally made significant payments on the arrears and the Landlord was sympathetic to the Tenants' health issues. Since the Landlord filed its application, the Tenants have made further payments towards the outstanding debt. The Landlord issued receipts "for use and occupancy only" and did not reinstate the tenancy.
- The current amount owing in rent arrears and late fees is \$5,321.00.
- The Landlord's agent asked for an Order of Possession effective January 31, 2010, and a monetary order for \$5,371.00, including recovery of the cost of the filing fee.

Tenant's testimony

The Tenant stated that he was not disputing the amount owed to the Landlord, and that the Landlord had been fair and patient. The Tenant stated that he was making every effort to keep his rent payments current, but could not commit to paying more than an additional \$50.00 per month to pay down the arrears.

Analysis

I accept the Landlord's testimony that the Tenants were duly served with the Notice to End Tenancy. The Tenants did not pay the rental arrears or dispute the Notice to End Tenancy within 5 days of being served with the Notice to End Tenancy. Pursuant to Section 39(5) of the Act, the Tenants are conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. In this case, the effective end to

the tenancy was September 25, 2009. However, the Landlord asked for an Order of Possession effective January 31, 2010, and I make that Order.

The Tenancy Agreement provides for late fees. Based on the testimony of the Landlord's agent and the Tenant, the Landlord has established the Landlord's monetary claim for arrears in the amount of \$5,321.00.

The Landlord has been successful in its application and is entitled to recover the filing fee in the amount of \$50.00 from the Tenants.

Conclusion

Under Section 48 of the Act, I grant the Landlord an Order of Possession **effective 1:00 p.m., January 31, 2010**. This Order must be served on the Tenants and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to Section 60 of the Act, I hereby grant the Landlord a Monetary Order in the amount of \$5,371.00 against the Tenants. This Order must be served on the Tenants and may be filed in the Provincial Court of British Columbia (Small Claims) 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*.

December 29, 2009

Date of Decision