



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

OP, MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on December 8, 2009 copies of the Application for Dispute Resolution and Notice of Hearing was sent to the tenant via registered mail at the address noted on the Application. A copy of a Canada Post receipt and tracking was provided as evidence of service. The landlord testified that approximately three days ago the registered mail was returned. The landlord stated the tenant remains in the rental unit and continues to receive his mail at the service address indicated on the Application.

These documents are deemed to have been served in accordance with section 89 of the *Act*, however the tenant did not appear at the hearing.

Preliminary Matter

A roll call of hearing conference call participants was completed at the start and conclusion of the hearing. The tenant was not present. The landlord representatives entered the hearing via three separate telephone lines.

Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to filing fee costs?

Background and Evidence

The landlord testified that the tenancy was established four to five years ago. The landlord took control of the Manufactured Home Park last year. Pad rental is \$440.00 per month and has not changed since the landlord assumed responsibility for the Park.

The landlord stated that a ten (10) day Notice to End Tenancy for non-payment of rent, which had an effective date of November 14, 2009, was served on November 4, 2009 by placing it the tenant's mail box. The landlord stated that the tenant returned the Notice and indicated he did not accept the landlord's authority to issue the Notice.

The Notice to End Tenancy indicated that the Notice would be automatically cancelled if the landlord received \$1,780.00 within five days of service. The Notice also indicated that the tenant is presumed to have accepted that the tenancy is ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

The landlord testified that the tenant will not pay the full amount of pad rental due and that in January he paid \$110.00 of the \$440.00 owed. The landlord testified that to January 2010 inclusive, the tenant has pad rent arrears in the sum of \$2,440.00.

Analysis

Section 81 of the Act stipulates that a document that is left in the mail box is deemed to be received on the third day after it is placed in the mail box. I therefore find that the tenant received the Notice to End Tenancy on November 7, 2009.

Section 39(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the Tenant receives the Notice. As the tenant is deemed to have received this Notice on November 7, 2009 I find that the earliest effective date of the Notice is November 17, 2009.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on November 17, 2009, pursuant to section 39 of the Act.

Section 39(4) of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights and, pursuant to section 39(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the Landlord an Order of Possession that is effective **two days after service**.

The landlord's financial records submitted as evidence indicates the tenant owes:

June 2009	430.00
August 2009	240.00
September 2009	230.00
October 2009	110.00
November 2009	330.00
December 2009	330.00
January 2010	330.00
	2440.00

I find that the landlord is entitled to compensation in the sum of \$2,440.00 for pad rent arrears.

I find that the landlord's application has merit, and I find that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Conclusion

The landlord has been granted an Order of possession that is effective **within two days of service upon the tenant**. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of **\$2,490.00** in compensation for \$2,440.00 pad rent arrears and the filing fee costs of \$50.00 paid by the landlord for this Application for Dispute Resolution.

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: January 15, 2010.

Dispute Resolution Officer