

DECISION

Dispute Codes

OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain an Order of Possession, a Monetary Order for unpaid rent and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 82 (2) of the *Manufactured Home Park Tenancy Act* (Act).

The landlord appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Manufactured Home Park Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issues(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

This month to month tenancy started on November 12, 2009. The landlord and tenant had a verbal agreement that the tenant could have the month of November rent free. The tenant was to start rent payments from December 01, 2009 and continue on the first of each month. Rent was initially agreed at \$400.00 in rent for the mobile home and \$160.00 rent for the site to a total amount of \$560.00 per month.

The landlord testifies that the tenant did not pay rent or site rent and he agreed with her that she should now pay \$560.00 to the landlord directly each month in total rent and he would pay the site rent to his landlord. The tenant has not paid any rent for December, 2009 and on December 31, 2009 the landlord served the tenant with a 10 Day Notice for unpaid rent. This notice stated

that the tenant had five days to pay the outstanding rent or apply for Dispute Resolution to dispute the notice.

The landlord testifies that since the 10 Day Notice was issued the tenant has not paid rent for January, February or March, 2010. The landlord has requested to amend his application for a Monetary Order to include unpaid rent for February and March, 2010. The landlord has provided a copy of the 10 Day Notice to End Tenancy dated December 31, 2009. This Notice states that unpaid rent is \$500.00. The landlord states that he made a mistake when he filled this notice out and it should have been \$560.00. The landlord date to end tenancy on the Notice is January 01, 2010.

The landlord seeks an Order of Possession to take effect as soon as possible.

Analysis

The tenant did not appear at the hearing, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I find that the landlord is entitled to recover rent arrears for December, 2009 and January, February and March 2010 of **\$2,240.00** pursuant to s.60 of the *Act*. I have allowed the landlords' amended claim for March, 2010 as the tenant continues to reside at the rental unit and would be aware that rent was due for this month.

At a previous hearing held in January, 2010 an agreement was reached between the landlord and tenant that the tenant could deduct **\$331.14** from the outstanding rent owed. Consequently I have deducted this amount from the rent arrears.

As the landlord has been successful in this matter, he is also entitled to recover the **\$50.00** filing fee for this proceeding pursuant to s. 65(1) of the *Act*.

The landlord will receive a monetary order for the balance owing as follows:

Outstanding rent for December, 2009, January February and March, 2010	\$2,240.00
Less deductions agreed at previous hearing	(-\$331.14)

Total amount due to the landlord	\$1,958.86
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I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 81 of the *Manufactured Home Park Tenancy Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. As this Notice was sent by registered mail it was deemed served five days after posting. The landlords date entered on the Notice for the day the tenancy would end was January 01, 2010. As this date was not 10 days from the date the notice was issued it was amended in accordance with s. 46 of the Act. Consequently, the amended date of the notice is January 15, 2010. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days of receiving the Notice.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 39(5) of the *Act*, to have accepted that the tenancy ended on the amended effective date of the Notice and grant the landlord an order of possession.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,958.86**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **two days** after service on the tenant. This order must be served on the Respondent and may be filed in the Supreme 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 *Residential Tenancy Act*.

Dated: March 04, 2010.

Dispute Resolution Officer