

## **DECISION**

**Dispute Codes:** OPR and FF

### **Introduction**

This application was brought by the landlord seeking an Order of Possession pursuant to a Notice to End Tenancy for unpaid rent served on February 11, 2010 under section 39 of the *Act* by posting on the tenant's door. The landlord also sought a Monetary Order for the unpaid rent and late fee, and recovery of the filing fee for this proceeding.

The landlord advised that the rent arrears had been paid and the rent was up to date at the time of the hearing.

### **Issue(s) to be Decided**

This application requires a decision on whether the Notice to End Tenancy should be upheld with an Order of Possession or set aside, and whether the landlord should recovery the filing fee for this proceeding from the tenant.

## **Background and Evidence**

Pad rent for this manufactured home park site is \$699 per month.

During the hearing, the landlord gave evidence that the Notice to End Tenancy had been served when the tenant had not paid the rent due on February 1, 2010.

The parties concur that the February and March rents were paid on or about March 2, 2010; however, the payment was made beyond the five days within receipt of the Notice to End Tenancy and the landlord issued a receipt with the notation, for use and occupancy," indicating that the payment did not reinstate the tenancy.

The landlord also submitted into evidence copies of four rent reminder letters served on the tenant since September 2009, each delivered on the fourth or fifth of the month, one breach letter, one outstanding rent letter, and three Notices to End Tenancy including the subject notice of February 11, 2010.

The tenant stated that the content of the reminder letters, with check boxes demanding payment within two working days or with next month's rent and an escalating late fee of \$2.00 per day to a maximum of \$25, had led him to believe that late payment was acceptable with the paid penalty.

The parties advised the manufactured home has been listed for sale since August of 2008 and the landlord stated that it had not sold as the list price was substantially over market value. The tenant said that he would be meeting shortly with the listing realtor and re-evaluating the listed price.

## Analysis

Section 39 of the *Act* provides that a manufactured home park landlord may issue a 10-day Notice to End Tenancy for unpaid rent to a tenant on any day after the rent is due. The tenant may nullify the notice by paying the rent within five days of receiving it or may make application to dispute the notice.

Section 39(5) of the *Act* states that if the tenant neither pays within five days nor makes application to dispute the notice, then the tenant is conclusively presumed to have accepted that the tenancy ended on the date set in the notice which was March 31, 2010.

In the present matter, the notice served on February 11, 2010 is deemed under section 83(c) of the *Act* to have been received three days later, or February 14, 2010. Even given the earliest possible rent payment date, March 1, 2010, proposed by the tenant payment was made beyond the five days permitted under section 39 of the *Act*.

As to the tenant's interpretation of the reminder letters, in consideration of the fact that they have been followed by breach letters and outstanding rent letters, and notices to end the tenancy, I do not find that the tenant was misled. Rather, I find that the landlord has taken prudent and progressive steps in an effort to avoid the present circumstances.

Therefore, the landlord requested and I find she is entitled to an Order of Possession.

On consideration of the tenant's statement that he would be evaluating the list price of the manufactured home, the landlord stated that she would be willing to accept the Order of Possession to take effect on June 30, 2010.

I find the landlord is so entitled and, having found merit in the landlord's application, I find that she should recover the filing fee for this proceeding from the tenant.

## **Conclusion**

The landlord's copy of this decision is accompanied by an Order of Possession to take effect on June 30, 2010 and a Monetary Order for \$50 in recovery of the filing fee for this proceeding, for service on the tenant.

The Order of Possession is enforceable through the Supreme Court of British Columbia and the Monetary Order is enforceable through the Provincial Court of British Columbia.

April 13, 2010