

Decision

Dispute Codes: OPC, MNR, FF, O

Introduction

This hearing dealt with an application by the landlord pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for orders as follows:

1. An Order of Possession pursuant to section 48.
2. A monetary order for unpaid rent and late fees pursuant to section 60.
3. To recover the filing fee from the landlord for the cost of this application pursuant to section 65.

Both the tenant and the landlord were given full opportunity to be heard, to present evidence and to make submissions. The landlord provided evidence that he personally served a One Month Notice to End Tenancy for Cause to the tenant on April 1, 2010 at 10:30 a.m. in the presence of a witness. The landlord gave sworn testimony that he personally served the tenant with the Application for Dispute Resolution hearing package (the hearing package) on May 14, 2010.

The tenant testified that he did receive the hearing package, but that it was posted on the door. The tenant testified that he was not served with the notice by the landlord. I noted that the landlord indicated in his May 14, 2010 application for dispute resolution that he had personally served the tenant with the notice on April 1, 2010. The tenant submitted written evidence as part of his disagreement with the landlord's application for dispute resolution. In his submission, he did not state that he failed to receive the April 1, 2010 notice to vacate by May 11, 2010.

The landlord testified that he was prepared to obtain and send a sworn statement by the person who witnessed the service of the notice to the tenant. While the landlord indicated that he was planning to fax this statement to me, I am satisfied by the

evidence at the hearing that the landlord did serve the tenant with the notice and the hearing package.

On the basis of the solemnly sworn evidence presented at the hearing a decision has been reached.

Issue(s) to be Decided

Whether the landlord is entitled to an Order of Possession. Whether the landlord is entitled to a monetary order for unpaid rent, a late rental fee and recovery of the filing fee for this application.

Background and Evidence

The landlord gave evidence that the history of the tenant's occupation of this unit of the mobile home park is complicated. He testified that the tenant first approached the landlord about living in this mobile home park on February 11, 2009. By March 20, 2009, it was apparent that the tenant and the landlord could not finalize an agreement. However, a female friend of the tenant's indicated that she owned the trailer on Lot 11 and that she and the tenant were planning to live together on this site. While the landlord thought the female owned the trailer on Lot 11, the landlord later discovered this was not the case. Rent for this site was established at \$324.95 per month.

By August, 2009, the female friend advised the landlord that she was not living there with the tenant. In December 2009, the landlord raised concerns with this woman regarding unpaid rent for this mobile home park site. The landlord testified that this woman advised them at that time that she never was the owner of the trailer. The landlord submitted into evidence a copy of the December 2009 "Mutual Agreement to End Tenancy" signed by the landlord and the tenant's female friend. This Agreement confirmed that this woman agreed to vacate the property on January 15, 2010. The tenant remains in the trailer on this site.

By May 2010, the woman who signed the Agreement to End Tenancy advised the landlord that she did not have any ownership stake in the trailer where the tenant resides.

The landlord identified another woman listed as the owner of this trailer through the Municipal Tax Records. After contacting this woman, the landlord testified that the landlord remains unclear as to who actually owns the trailer on Site 11.

The landlord testified that the April 1, 2010 notice for cause was served to the tenant for being repeatedly late in paying the rent, a breach of a material term of the tenancy agreement that had not been corrected within a reasonable period of time. The landlord testified that the tenant did not submit an application for dispute resolution within ten days of receiving the notice, and as such the tenancy ended on May 11, 2010.

The landlord testified that the tenant attempted to pay the May rent by way of a money order on May 20, 2010. The landlord has refused to accept this rental payment, pending the outcome of his application for dispute resolution. The May 2010 rental payment has been exchanged a number of times. The landlord testified that he is keeping this money order for safekeeping, but has no intention of cashing this until he receives direction through this hearing process.

The landlord presented evidence that the tenant has a long history of late payments for this mobile home site. The landlord testified that the tenant did not make any payments for some of the months of this tenancy, including June 2009, February 2010, March 2010 and April 2010.

The tenant testified that he has a valid June 2009 receipt for cash paid to the landlord's former building manager. The tenant testified that he did not pay rent from February 2010 until April 2010, in accordance with an oral agreement that he had arranged with the landlord. The tenant maintained that his written evidence confirms his assertion that he has been paying his rent in advance since the tenancy began in March 2009, and

that the landlord's records are all incorrect. The tenant did not question any of the evidence submitted by the landlord regarding specific late fees assigned during the course of this tenancy. The tenant provided sworn evidence that he was always paying in advance of the following month's rent. He did not provide any written confirmation of this practice through the tenancy agreement or in any other document from the landlord. The landlord testified that the tenant paid a security deposit in March 2009 and that this payment may have led him to believe that he was paying in advance. The landlord could not identify the provision in the tenancy agreement where the requirement for a security deposit was outlined.

The landlord applied for an Order of Possession and a monetary order of \$1,300.00 which the landlord maintained remains owing. The tenant disputes the landlord's summary of unpaid rent, although the tenant agrees that the landlord has not cashed any payments from him for May or June 2010.

Analysis

Order of Possession

I find that the landlord is entitled to an Order for Possession. While the tenant did appear at the hearing, he did not make an application to set aside the Notice to End Tenancy and the time to do so has expired. In these situations, the *Manufactured Home Park Tenancy Act* provides that the tenant(s) has/have been deemed to have accepted the end of the tenancy on the date set out in the Notice. Therefore this tenancy ended on May 11, 2010. The landlord has requested an Order of Possession. I grant an Order of Possession effective seven days after service. If the tenant does not vacate the rental site within the seven days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

Monetary Order for Rental Arrears

During the course of the hearing, it became apparent that there are factual deficiencies in the information provided by both parties with respect to the rent paid and the rent

owing. The landlord testified that he does not know who owns the trailer on site 11; he only knows that the tenant continues to live there. The tenant maintained that there was an oral agreement with the landlord whereby he would perform work and improvements to the mobile home park in exchange for rent from February through April 2010. He testified that the landlord gave him oral permission to refrain from charging late fees while he performed this work. The landlord denied making any such agreement, noting that it would seem unreasonable of him to have accepted such an arrangement while simultaneously seeking a Notice to End Tenancy for Cause on the basis of late payment of rent. The tenant had nothing in writing from the landlord to support his assertion that the landlord had given him permission to be late in his rent payments. Neither party provided compelling evidence to support their assertions regarding the tenant's claim that he made a cash payment for his June 2009 rent.

I find that the landlord has not accepted payment from the tenant for May or June 2010, pending the outcome of this hearing. I issue a monetary order in the amount of \$324.95 for each of May and June 2010. I reduce this monetary order by \$324.95, as the landlord testified that he continues to hold the tenant's \$324.95 money order for his May rent. I authorize the landlord to cash that money order in partial payment of this monetary award. I disallow the landlord's claim for additional rental arrears, as the landlord has not provided evidence to the extent necessary to substantiate his claim.

Security Deposit

The landlord testified that he continues to hold a \$324.95 security deposit plus interest from March 25, 2009 to the date of this decision. Over that period, no interest is owing on the landlord's retention of the security deposit. Although the landlord's application does not seek to retain the deposit, using the offsetting provisions of section 65 of the *Act*, I will allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

Filing Fee

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I grant the landlord an Order of Possession to be effective seven days after notice is served to the tenant.

I issue a monetary order in favour of the landlord as follows:

Uncashed May 2010 Rental	\$324.95
Rental for June 2010	324.95
Less the Tenant's Money Order Held by the Landlord for Safekeeping	-324.95
Less Security Deposit (\$324.95)	-324.95
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$50.00

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial Court of British Columbia.