

DECISION

Dispute Codes:

For the landlord: OPR , OPC, OPB, MNR, FF

For the tenant: CNR, AS, FF

Introduction / background

A hearing was originally convened in response to an application from the tenant filed on September 03, 2009 to:

- Cancel a Notice to End Tenancy for Unpaid Rent or Utilities (Notice to End) issued by the landlord on August 11, 2009, deemed received August 16, 2009 – with an effective date of August 22, 2009.
- Recover filing fee

By decision dated September 17, 2009, the Dispute Resolution Officer (DRO) adjourned the hearing for reasons set out in that decision. The DRO ordered that the matter be heard along with an application submitted by the landlord on September 04, 2009 (and scheduled for hearing on October 23, 2009), seeking:

- An Order of Possession for an undisputed Notice to End for Unpaid Rent, for an undisputed One (1) Month Notice to End Tenancy for Cause, and for Breach of a material term of the tenancy agreement
- Monetary Order for the unpaid rent and filing fee
- Recover filing fee

The date of hearing was subsequently changed from October 23, 2009 to November 17, 2009. By decision another DRO adjourned the hearing a second time and a *face to face* hearing was scheduled on January 26, 2010. As at that date, the respective applications were as follows:

For the landlord:

- an Order of Possession for Unpaid Rent
- an Order of Possession for Cause

- an Order of Possession for Breach
- Monetary Order for Unpaid Rent and recovery of the filing fee;

For the tenant:

- To Cancel the landlord's Notice to End Tenancy for Unpaid Rent,
- Authority to permit the tenant to assign or sublet because the landlord's permission has been unreasonably withheld
- for recovery of the filing fee.

By decision dated January 27, 2010 the hearing was again adjourned to today's date.

Preliminary Matters / Amendments

At the outset of today's hearing counsel for the landlord requested a third adjournment as the parties had not settled their dispute. I determined this to be insufficient reason for an adjournment.

Counsel for the tenant advised that on April 13, 2010 the tenant had filed a writ in Supreme Court naming the Landlord and affected parties of this matter, and that the writ claims damages; and, for all intents and purposes, possession of the rental unit (site pad) by way of assurances of a tenancy and an assurance for the assignment of the tenancy to the new occupants. Counsel argued I should decline jurisdiction of this matter as the tenant's dispute is now linked substantially to a matter before the Supreme Court, as per Section 51(2)(c) of the Manufactured Home Park Tenancy Act (the Act). Nonetheless, counsel for the tenant also reiterated they are now withdrawing their Application for Dispute Resolution to Cancel the Notice to End for unpaid Rent: no longer disputing it; and, further, are not seeking authority under this Act to permit the tenant to assign or sublet.

In the absence of a copy of the tenant's application to Supreme Court, counsel for the landlord argued the court does not have jurisdiction in respect to the matters before this act as they are matters that are the sole jurisdiction of this Act; and, that if the tenant insists on withdrawing their Application under this Act that the landlord is now entitled to an Order of Possession of the rental site. The landlord still seeks such an order, and the landlord also orally amended their application by withdrawing the portion for a

Monetary Order for unpaid rent, as the landlord is sufficiently confident the tenant has now satisfied the payment of rent, albeit for Use and Occupancy Only.

The portion of the landlord's application requesting a monetary order is hereby **dismissed** with leave to reapply.

Issue(s) to be determined

Is the dispute now linked substantially to a matter that is before the Supreme Court?

Should the Director decline jurisdiction?

Is the landlord entitled to an Order of Possession?

Evidence / Analysis

I accept the tenant's submission in respect to their Application for Dispute Resolution under this Act, and grant leave to the tenant to withdraw their application. The tenant's application is hereby withdrawn and cancelled.

Counsel for the tenant provided the Writ of Summons and Statement of Claim by the tenant commencing the action in Supreme Court. Having reviewed the tenant's application to Supreme Court I find the tenant's action is ambiguous in respect to the issues advanced by the sole remaining Application of the landlord before this Act. As a result, I decline to concede to the argument that I do not have jurisdiction in respect to the remaining application before me, the landlord's. The landlord applies for an Order of Possession for Unpaid Rent, for Cause, and for Breach.

The tenant originally did not, and has not applied to dispute the landlord's Notice to End for Cause and therefore as per Section 40 of the Act, is conclusively assumed to have accepted that the tenancy ends (ended) on the effective date of the Notice and must vacate. Further, now in the absence of an Application from the tenant disputing the landlord's Notices to End for Unpaid Rent and the landlord's Application to uphold all their Notices to End, **I find** the landlord is entitled to an Order of Possession.

Conclusion

The tenant's Application is **withdrawn / cancelled**.

The portion of the landlord's application requesting a monetary order for unpaid rent is hereby **dismissed** with leave to reapply.

I grant an Order of Possession to the landlord. Section 48(3) of the Act allows the Director to determine the effective date of the Order. The landlord is being given an Order of Possession effective **August 31, 2010**. Ending a tenancy is a serious matter; however, if the landlord determines to end the tenancy this Order must be served on the tenant. Should the tenant fail to comply with the Order, the Order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

As the landlord was successful in their application, they are further entitled to the recovery of the filing fee in the amount of **\$50**. **I grant** the landlord a monetary order under Section 60 of the Act for the amount of **\$50**. If necessary, this order may be filed in the Small Claims 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*.