

## **Decision**

**Dispute Codes:** CNR, FF

### **Introduction**

A previous hearing was held on September 23, 2010 in response to an application by the tenant for cancellation of a notice to end tenancy, and recovery of the filing fee. That hearing proceeded in the absence of the tenant, and an order of possession was issued in favour of the landlord. Subsequently, the tenant applied for review on the basis that he was unable to attend the hearing because of circumstances that could not be anticipated and were beyond his control. The dispute resolution officer considering the application granted the tenant's review application and this hearing was then scheduled. Both parties participated in this hearing and gave affirmed testimony.

### **Issues to be decided**

- Whether the tenant is entitled to either or both of the above under the Act

### **Background and Evidence**

There is no written tenancy agreement in evidence for what appears to be a month-to-month tenancy beginning on March 1, 2010. However, during the hearing the parties referred to a manually written document reflecting an agreement between them pursuant to which, on the first day of each month, the tenant pays a monthly pad rent of \$600.00, in addition to a monthly payment-to-purchase in the amount of \$1,500.00.

Arising from rent and payment-to-purchase amounts which were unpaid when due on August 1, 2010, the landlord issued a 10 day notice to end tenancy for unpaid rent dated August 2, 2010. The notice was served in person on the tenant on that same date. The tenant asserts that he offered cash to the landlord on that occasion, however, the landlord disputes that claim. Subsequently, the tenant acknowledges that he has paid no rent for August, September, October or November 2010, and he continues to reside in the manufactured home.

A copy of the 10 day notice was submitted into evidence. The amount shown as overdue is \$2,120.00. The party assisting the landlord clarified that this total is comprised of unpaid rent for August in the amount of \$600.00, in addition to unpaid payment-for-purchase for August in the amount of \$1,500.00, and a \$20.00 penalty for late payment of rent. The party assisting the landlord testified that the documented agreement between the parties, which was referenced above, does not appear to include a provision for the assessment of a penalty in the event of late payment of rent.

During the hearing the landlord confirmed his request for an order of possession in the event the tenant's application does not succeed.

### **Analysis**

Based on the documentary evidence and testimony of the parties, I find that the tenant was served with a 10 day notice to end tenancy for unpaid rent dated August 2, 2010. The tenant filed an application to dispute the notice within 5 days of receiving it, however, he did not pay the outstanding rent. On a balance of probabilities, I find that the tenant did not offer payment of rent following issuance of the notice and, therefore, the landlord had no opportunity to decline to accept payment. Accordingly, I find that the landlord is entitled to an order of possession.

The tenant's application is hereby dismissed.

### **Conclusion**

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service upon the tenant. 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.

DATE: November 10, 2010

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Dispute Resolution Officer

