



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes

OPR, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for an Order of Possession for unpaid rent and Monetary Order for unpaid rent and damage or loss under the Act, regulations and tenancy agreement. Both parties appeared at the hearing and were provided the opportunity to make submissions, in writing and orally, and to respond to the submissions of the other party.

The tenant submitted that he had received the landlord's hearing package only three days before the hearing in the snow on his deck with tape on the envelope. The landlord submitted that the tenant has not picked up registered mail sent to him in the past so attempted to deliver in person and when the landlord could not reach the tenant personally the landlord posted the hearing package on the tenant's door on December 23, 2010.

I was satisfied that the hearing package was posted on the tenant's door on December 23, 2010. Although posting is sufficient for requesting an Order of Possession, the landlord was cautioned that applications for monetary claims are to be served in person or by registered mail or by another method ordered by the Director. Both parties indicated that they were prepared to proceed with the application and I deemed the tenant sufficiently served for purposes of the landlord's application for an Order of Possession and Monetary Order.

On a procedural note, in making this application the landlord had included a monetary claim with respect to a vehicle transaction between the landlord and tenant. I refused jurisdiction to resolve that dispute and amended the landlord's claim to exclude that claim.

Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession?

2. Is the landlord entitled to a Monetary Order for unpaid rent, late fees, NSF fees and loss of rent?

Background and Evidence

The parties provided undisputed evidence as follows. The tenancy commenced March 1, 2010. The tenant is required to pay rent of \$300.00 on the 1st day of every month. The written tenancy agreement provides for late fees of up to \$25.00 per month and NSF charges of \$50.00 per cheque.

The landlord submitted that the tenant has not paid rent for July 2010 onwards and on October 25, 2010 a 10 Day notice to End Tenancy for Unpaid Rent (the Notice) was sent to the tenant via registered mail. The landlord provided a registered mail receipt as evidence. The Notice indicates that \$1,200.00 was outstanding as of August 1, 2010; however, the landlord submitted that a bookkeeping error was made and the Notice should have read since July 1, 2010. The Notice has an effective date of November 9, 2010.

The tenant submitted that he did not receive the 10 Day Notice but acknowledged that he did receive registered mail notification cards. The tenant explained that he does not pick up registered mail since only bill collectors send him registered mail. The tenant claims that he had paid rent for July 2010 in cash but acknowledged he has not paid any rent for August 2010 onwards.

The tenant cited medical and financial issues as reasons for not paying the rent. The tenant was requesting more time to pay the rent or sell his manufactured home. The landlord was of the position that the landlord was gone several months without rent and requested an Order of Possession.

The landlord has requested compensation for unpaid rent from July 2010 onwards; late fees of \$25.00 for six months starting July 2010 and four NSF cheque charges of \$50.00 each.

Included in the landlord's documentary evidence was a copy of the tenancy agreement, 10 Day Notice, registered mail receipt and emails between the parties and a letter to the tenant August 4, 2010 and October 25, 2010.

Analysis

Where a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent or dispute the Notice. Otherwise, the tenant is conclusively presumed to have accepted the Notice and must vacate the rental site by the effective date.

Based upon the submissions of both parties, I am satisfied the landlord served the tenant with a 10 Day Notice by registered mail sent October 25, 2010. Section 90 of the Act deems a document to be served five days after mailing. Thus a tenant cannot avoid service of a document by refusing to accept or not picking up the registered mail.

Since I have found the tenant was served with the 10 Day Notice five days after it was mailed, the tenant had until November 4, 2010 to dispute the Notice or pay the outstanding rent. The tenant did neither of these two options. Therefore, in accordance with the Act, the tenant is conclusively presumed to have accepted the tenancy would end November 9, 2010 and would have to vacate the rental site.

Since the tenant continues to occupy the rental site the landlord is entitled to an Order of Possession. With this decision I provide the landlord with an Order of Possession effective two days after service of the Order of Possession upon the tenant. The Order of Possession may also be enforced in the Supreme Court of British Columbia as an Order of that court.

With respect to the landlord's monetary claims, I find as follows. The parties provided disputed testimony with respect to payment of rent for July 2010. I find the tenant's testimony consistent with the 10 Day Notice to End Tenancy issued by the landlord and in the absence of other documentary evidence to corroborate the landlord's submission I find the landlord has not satisfied me that rent was outstanding for July 2010. Therefore, I award the landlord unpaid rent and loss of rent for the months of August 2010 through January 2011.

I award the late fees to the landlord in the amount of \$25.00 per month for the months of August 2010 through November 2010. I do not award the landlord late fees after November 2010 as the tenancy agreement came to an end in November 2010.

The provision for NSF fees in the tenancy agreement does not comply with section 5 of the Manufactured Home Park Tenancy Regulations since the charge exceeds \$25.00 and the term is unenforceable. The landlord did not provide documentary evidence as to the actual amount of NSF charged to the landlord by the landlord's financial institution. Therefore, I deny the landlord's claims for NSF charges.

As the landlord was largely successful in this application, I award the filing fee to the landlord. I provide for the landlord a Monetary Order calculated as follows:

Unpaid rent and loss of rent – August 2010 to January 2011	\$ 1,800.00
Late fees – August 2010 to November 2010	100.00
Filing fee	<u>50.00</u>
Monetary Order	<u>\$ 1,950.00</u>

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The tenancy has ended for unpaid rent and the landlord has been provided an Order of Possession effective two (2) days after service upon the tenant. The landlord has been provided a Monetary Order in the amount of \$1,950.00 to serve upon the tenant.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Manufactured Home Park Tenancy Act*.

Dated: January 18, 2011.

Residential Tenancy Branch