



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an Order of Possession for unpaid rent or utilities; for a monetary order for unpaid rent or utilities; and to recover the filing fee from the tenant for the cost of this application.

Both parties attended the conference call hearing, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence.

The landlord provided two evidence packages in advance of the hearing, which were not provided within the time-lines provided for in the *Act* or the regulations, and did not provide the tenant with copies of that evidence. Therefore, the evidence packages are not considered in this Decision.

All testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent or utilities?
Is the landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

This tenancy began on January 1, 2010 and the tenant still resides at the manufactured home park and owns the manufactured home. Rent in the amount of \$575.00 was payable in advance on the 1st day of each month for 2010, and was increased to \$595.00 per month commencing January 1, 2011.

The landlord testified that the tenant paid \$250.00 for the month of June, 2010, leaving a balance outstanding of \$345.00, including a \$20.00 late fee which is provided for in the tenancy agreement. The tenant further failed to pay rent on time in September, paying it in full on October 1, 2010, leaving outstanding the \$20.00 late payment fee. The tenant further failed to pay rent for October, November and December, 2010 and now owes for January, 2011 as well.



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The landlord stated that he personally served the tenant on November 2, 2010 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, but the tenant threw it away, so the landlord posted it to the door of the manufactured home. The landlord requests an Order of Possession and a monetary order for \$2,745.00.

The tenant testified that the landlord's evidence is incorrect; that the tenant was not served at all with the notice to end the tenancy. The only documentation that the landlord has served is the Landlord's Application for Dispute Resolution. He also stated that he was in hospital on November 2, 2010, having been admitted on October 24 or 25 and was not released until November 10, 2010.

Further, the tenant states that he paid October's rent on October 1, 2010 and obtained a receipt from the landlord. He further stated that he had his sister attend to pay rent for the months of November and December, but the landlord refused to take the money because he wanted the late fees as well.

The tenant agrees that he owes rent for November, 2010 in the amount of \$575.00 plus the \$20.00 late fee, December's rent in the amount of \$575.00, January's rent in the amount of \$595.00 plus the \$20.00 late fee, and \$325.00 for previous arrears, although it is unclear in the evidence whether that is owed for May or June, 2010. The tenant does not agree that he owes a late fee for the month of December because the landlord refused to accept payment.

Analysis

I find that the landlord has failed to establish that the tenant was properly served with the notice to end tenancy.

I further find that the tenant is in arrears of rent in the total sum of \$2,705.00 and I grant the landlord a monetary order for that amount.

Conclusion

For the reasons set out above, the landlord's application for an Order of Possession is hereby dismissed.

I grant the landlord a monetary order in the amount of \$2,705.00, and I order that the tenant pay that amount by the end of January, 2011. The landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application, and the monetary order will reflect a total of \$2,755.00. This order may be filed in the Provincial Court of British Columbia, Small Claims division and enforced as an order of that Court.



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I further order that the tenant comply with the *Act* by paying rent when it is due. Failure to pay the outstanding arrears by January 31, 2011, or if the tenant fails to pay February's rent on or before February 1, 2011, the landlord will be at liberty to serve the tenant with a notice to end the tenancy for unpaid rent or utilities.

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*.

Dated: January 07, 2011.

Residential Tenancy Branch