

DECISION

Dispute Codes: Landlord: OPR, MNR, MNDC and FF
 Tenants: CNR, OLC, FF and O

Introduction

These applications were brought by both the landlord and the tenants.

By application received March 18, 2011, the landlord seeks an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent served by registered mail sent on March 3, 2011. The landlord also sought a Monetary Order for the unpaid rent, damage or loss under the legislation or rental agreement and recovery of the filing fee for this proceeding.

By application received March 9, 2011, the tenants seek to have the same Notice to End Tenancy set aside, an Order that the landlord comply with the legislation and/or rental agreement and recovery of the filing fee for this proceeding. The tenants also sought to have set aside an order from the landlord that they remove a fifth wheel trailer from the property.

Issues to be Decided

This application requires a decision on whether the Notice to End Tenancy of March 3, 2011 should be set aside or upheld with an Order of Possession and whether the landlord is entitled to a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding. A further decision is required on whether the landlord's order that the fifth wheel trailer be moved is effective.

Background and Evidence

This manufactured home park tenancy began in August of 2007 although the tenants had possession of the manufactured home from February 15, 2006. Rent is \$299.20 per month.

As a matter of note, this tenancy was the subject of a hearing on October 22, 2010 as a result of which the landlord was granted a Monetary Order for four months of unpaid rent. The arrears was paid when the tenants were served with an Order of Seizure and Sale issued by the Provincial Court of British Columbia. However, as the landlord had failed to state an end of tenancy date on the Notice to End Tenancy, she was not granted the Order of Possession.

During the hearing, the landlord gave evidence that while the tenants did pay the former arrears, they have not paid the rent due November 1, 2010 nor for any month since, up to and including the hearing date of March 30, 2011.

The tenants stated that they did not owe rent as a result of a previous agreement with the landlord who has since granted Power of Attorney to his daughter in law and management of the park to his daughter who represented the corporate landlord during the hearing.

The park manager (landlord), gave evidence that while there had been an arrangement with her father that the tenants had been granted rent relief in exchange for services rendered, that arrangement had been rescinded by letter of June 1, 2009. The tenant had been injured in an automobile accident in 2008 and had rendered no services since that time.

In the letter of June 1, 2009, the .POA advised that, unless the tenants were able to provide a copy of a written agreement granting free rent in perpetuity, the tenants would henceforth be required to pay monthly rent. At that time, at the direction of the principal, the POA granted that no further claim would be brought on \$5,415 on unpaid back rent provided the tenants pay rent from then on.

The tenants responded by providing twelve post dated cheques for future rent. However, when those ran out, they provided no further cheques resulting in the hearing of October 22, 2010 and the present hearing.

Analysis

Section 20 of the *Act* provides that tenants must pay rent when it is due. Section 39 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenants did make application to dispute the notice but they have put forward no evidence to support their claim of an agreement that they would never have to pay pad rent and they concur that that have not paid rent from November 2010 to the present.

Therefore, I find that the landlord is entitled to an Order of Possession as requested to take effect at 1 p.m. on May 5, 2011.

I further find that tenants owe the landlord an amount calculated as follows:

Rent for November 2010	\$299.20
Rent for December 2010	299.20
Rent for January 2011	299.20
Rent for February 2011	299.20
Rent for March 2011	299.20
Filing fee	<u>50.00</u>
TOTAL	\$1,546.00

As to the tenants' claim with respect to the fifth wheel trailer, the landlord stated that it could remain in place until the May 5, 2011 of the tenancy. Therefore, I find that no decision is required on that issue in the present hearing.

Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on May 5, 2011.

In addition, the landlord's copy of this decision is accompanied by a Monetary Order for **\$1,546.00**, enforceable through the Provincial Court of British Columbia, for service on the tenants.

March 30, 2011