



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord	OPR, MNR, and FF
Tenant:	CNR, MNDC and PSF

Introduction

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

By application of April 8, 2011, the landlord seeks an Order of Possession pursuant to a 10-day Notice to End Tenancy for unpaid rent dated and served by posting on March 29, 2011 and setting an end of tenancy date of April 12, 2011.

By application of April 4, 2011, the tenant seeks to have the Notice to End Tenancy set aside, a monetary order for loss or damages under the legislation or rental agreement and an Order for provision of services or facilities.

Despite having made application and having been served by the landlord, the tenant did not call in to the number provided to enable his participation the telephone conference call hearing. Therefore, the tenant's application is dismissed without leave to reapply and the hearing proceeded on the landlord's application in the absence of the tenant.

I note that the tenant brought a similar application for loss or damage which was set for hearing on August 30, 2011 and was dismissed without leave to reapply when the tenant did not appear and the landlord did.

Issues to be Decided

The landlord's application requires a decision on whether the landlord is entitled to an Order of Possession and a Monetary Order for the unpaid rent and recovery of the filling fee for this proceeding.

Background and Evidence

This manufactured home park tenancy began in October of 2001 and was assumed by the present tenant on the passing of his mother approximately three years ago. Pad rent is currently \$506.84 per month.

During the hearing, the landlord gave evidence that the Notice to End Tenancy of March 29, 2011 had been served when the tenant had an accumulated rent arrears to July 2010 of \$553.65 and has paid no rent for each of the nine successive months since.

The landlord also stated that it appears the rental unit is seldom, if ever, home to the tenant and it is occupied by various persons unknown to the landlord. The landlord stated the home is in a severe state of disrepair.

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, while the tenant did make application to dispute the notice, he failed to appear and I dismissed the application without leave to reapply. In addition, I accept the evidence of the landlord that the tenant did not pay the rent or any portion of it to date.

Therefore, under section 39(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date under the Notice to End Tenancy which was April 12, 2011.

Thus, I find that the landlord is entitled to an Order of Possession to take two days from service of it on the tenant.

While the landlord had requested the monetary award include late fees, I decline to include them as I do not have a copy of the rental agreement and because of the landlord's delay in serving notice. In addition, while I have permitted the landlord to amend the application to include the unpaid rent for April, I declined to include rent for May as the rent due date has not yet passed.

Thus, I find that the landlord is entitled to a Monetary Order for the unpaid rent and recovery of the filing fee for this proceeding, calculated as follows:

Accumulated arrears to July 2010	\$553.65
Rent: for: August 200	506.84
September 2010	506.84
October 2010	506.84
November 2010	506.84
December 2010	506.84
January 2011	506.84
February 2011	506.84
March 2011	506.84
April 2011	506.84
Filing fee	50.00
TOTAL	\$5,165.21

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 two days from service of it on the tenant.

In addition, the landlord's copy of this decision is accompanied by a Monetary Order for **\$5,165.21**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

April 28, 2010