

## **DECISION**

Dispute Codes      OPC, MNR

### Introduction

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- an Order of Possession for cause pursuant to section 48; and
- a monetary order for unpaid rent pursuant to section 60.

The tenant did not attend this hearing, although I waited until 9:45 a.m. in order to enable the tenant to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. She testified that she handed a 1 Month Notice to End Tenancy for Cause (the Notice) to an adult who was residing in the manufactured home as a sub-tenant on November 25, 2010, with the request that this Notice be forwarded to the tenant. She testified that she sent the tenant a copy of her dispute resolution hearing package by registered mail to the address of the manufactured home on May 9, 2011. She provided a Canada Post Tracking Number to confirm this mailing. She said that the package was returned to her by Canada Post on May 31, 2011 as unclaimed. I am satisfied that the landlord served the above documents to the tenant in accordance with the *Act*.

### Issues(s) to be Decided

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

### Background and Evidence

The landlord testified that a previous tenant purchased this manufactured home in 2005. When that tenant died, the present tenant inherited the manufactured home.

The landlord testified that the tenant has had an inconsistent pattern of paying the \$260.00 in monthly pad rental that he committed to pay when he entered into a home site tenancy agreement on January 23, 2009.

The landlord entered written evidence of a previous decision and order issued by a Dispute Resolution Officer (DRO) from the Residential Tenancy Branch with respect to this tenancy. In that January 12, 2009 decision, the terms of a settlement agreement were outlined by the DRO. The landlord also provided a copy of an Order of Possession that was to take effect on January 31, 2009 if the terms of that agreement were not followed by the tenant.

The landlord obtained a Writ of Possession to obtain full and peaceful vacant possession of the manufactured home site and authorization to seize and sell at public auction the goods and chattels left on the site on April 9, 2010. However, for various reasons she did not implement that process in a timely fashion.

Her present application seeks an end to this tenancy as she maintained that the tenant continued to sublet the premises to individuals without seeking permission to do so. She noted that the January 12, 2009 decision noted that the tenant agreed "that all prospective subtenants will make the usual application for tenancy with the landlord." The landlord testified that the tenant had not followed this provision of the January 12, 2009 settlement agreement. The landlord asked for an Order of Possession so that she could ensure that the tenant removed his manufactured home from her manufactured home park.

The landlord also applied for a monetary award of \$960.00 for unpaid rent from this tenancy for the rental period from February until May 2011. She said that the unauthorized person who was living there paid \$80.00 towards the unpaid rent when she visited the site. She said that she emphasized when he paid this amount that this by no means meant that she was commencing a tenancy with him and that she considered the tenant in default of rent owing. At the hearing, she also requested a monetary award for June 2011 as no rent has been paid for the period following February 1, 2011.

#### Analysis - Order of Possession

The tenant has not made application pursuant to section 40(4) of the *Act* within ten days of receiving the 1 Month Notice to End Tenancy for Cause. In accordance with section 40(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by December 31, 2010. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenant. If the tenant does not vacate the manufactured home site within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

#### Analysis – Monetary Award

Based on the undisputed evidence presented by the landlord, I accept that there is unpaid rent owing from this tenancy from February until June 2011, less the \$80.00 the landlord received from the person living on the premises. I accept the landlord's evidence that her acceptance of the \$80.00 payment by the occupant did not continue

this tenancy. I issue a monetary Order in the landlord's favour in the amount of \$1,220.00 in the following terms.

<b>Item</b>	<b>Amount</b>
Unpaid Rent – February 2011 – June 2011 (5 months @ \$260.00 = \$1,300.00)	\$1,300.00
Less \$80.00 payment by occupant of rental premises	-80.00
<b>Total Monetary Order</b>	<b>\$1,220.00</b>

### Conclusion

I provide the landlord with a formal copy of an Order of Possession to take effect within 2 days of the landlord's service of this notice to the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary Order in the landlord's favour in the amount of \$1,220.00, the amount of unpaid rent owing from this tenancy. The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court.

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*.