



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, OLC, FF
OPR, MNR, MNDC, FF

Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 26, 2011, for an Order that the Landlord comply with the Act or tenancy agreement and to recover the filing fee for this proceeding. The Landlord applied for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

The Tenant said she purchased the manufactured home from the previous owners but they had not registered it in their names when they had purchased it. Consequently, the manufactured home was still in the name of the owner prior to that time. The Tenant moved into the rental unit on November 1, 2010. The Parties agree that the Landlord advised the Tenant to make her rent payments to the registered owner of the manufactured home at that time. The Tenant's rent payments to the registered owner were \$548.00 per month. However pad rent under the registered owner's tenancy agreement with the Landlord at that time was \$530.08 per month. The Tenant entered into a tenancy agreement with the Landlord on March 6, 2011 for a one year fixed term commencing January 1, 2011 and her rent was set at \$585.00 per month payable in advance on the 1st day of each month.

The Tenant said the agent acting on behalf of the registered owner of the manufactured home (ie. his mother, P.L.) assured her that the pad rent had been paid to the Landlord to the end of October 2010 however she later discovered that was not the case. The Tenant said she made a payment of \$1,096.00 to P.L. on December 3, 2010 for November and December 2010 rent. The Tenant said P.L. paid \$1,060.00 of this amount to the Landlord on December 3, 2010 however the Landlord applied it to rent arrears for September and October 2010. The Tenant said she made a further payment

of \$548.00 to P.L. on January 21, 2011 for January 2011 rent. The Tenant said P.L. paid \$530.08 of this amount to the Landlord on February 4, 2011 who applied it to rent arrears for November 2010.

The Tenant said she made a payment of \$1,210.00 to the Landlord on March 18, 2010 for February and March 2011 rent however the Landlord applied it to rent for January and February 2011. The Tenant said she made a payment of \$570.00 to the Landlord on April 21, 2011 for April 2011 however the Landlord applied it to rent arrears for December 2010. The Tenant said she made a payment of \$605.00 to the Landlord on May 20, 2011 for May 2011 rent however the Landlord applied this payment to rent arrears for March 2011.

The Tenant said she received the 10 Day Notice to End Tenancy from the Landlord on June 26, 2011 however she disputed the amount shown as rent arrears (\$2,420.00) in part because it included an amount for July rent which was not yet due. The Tenant said she made a payment of \$1,200.00 on July 23, 2011 for June and July 2011 and therefore she argued that there are currently no rent arrears.

The Landlord did not dispute the payments alleged by the Tenant however he said that the Tenant's boyfriend gave him a rent cheque in the amount of \$550.00 for December 2010 which was returned unpaid. The Landlord said the Tenant paid this amount in cash on April 21, 2011 together with a \$20.00 late fee. The Landlord admitted that the Tenant made a payment of \$1,200.00 on July 23, 2011 but claimed that it was for rent for April and May 2011 and that the Tenant still owes \$1,220.00 which represents rent for June and July 2011 of \$1,170.00, unpaid rent for April and May 2011 of \$10.00 with the balance being for late fees.

Analysis

I find that the Parties entered into a tenancy agreement on March 6, 2011 for a fixed term commencing January 1, 2011. Prior to this time, I find that the Landlord had a tenancy agreement with the previous owner of the manufactured home which was why he advised the Tenant to pay her rent to him (the owner of the manufactured home) prior to January 1, 2011. Consequently, I find that the Landlord cannot hold the Tenant responsible for rent arrears prior to January 1, 2011 that accrued under a different tenancy agreement with a different tenant. I also find that there is no evidence that the Tenant made her payment on April 21, 2011 on behalf of the registered owner of the manufactured home for his rent arrears. In fact, the Tenant argued that she had already made a rent payment for December 2010 to P.L. and therefore should not be liable for that. Consequently, I find that the Landlord was not entitled to apply the Tenant's payment of \$570.00 made on April 21, 2011 to rent arrears owed by another tenant and he must pursue his former tenant for those rent arrears.

Similarly, I find that the Tenant was responsible for all rent payments as of January 1, 2011. I find that the Tenant made a payment of \$548.00 on January 21, 2011 to P.L. however that payment was used by P.L. to pay rent arrears for November 2010. Consequently, I find that the Tenant's rent payment for January 2011 was not made to the Landlord on her behalf and that the Tenant remains liable for it. The Tenant's remedy in this case is to recover that payment from the former registered owner and/or his agent, P.L.

In summary, I find that as of June 26, 2011, the Tenant was responsible under the tenancy agreement for 6 months of rent at \$585.00 per month for a total of \$3,510.00. I find that as of June 26, 2010, the Tenant made rent payments to the Landlord of \$2,385.00. Consequently, as of June 26, 2011 when the Landlord served the 10 Day Notice, I find that there were rent arrears of \$1,125.00 and not \$2,420.00 as alleged on the 10 Day Notice. The Tenant made a further cash payment of \$1,200.00 to the Landlord on July 23, 2011 for which she was issued a receipt for "pad rent."

The Landlord said the Tenant's payments made in March, April and May 2011 included 4 late fees of \$20.00 each pursuant to a term of the tenancy agreement to that effect. I also find that the Tenant was late paying rent for January, February and June 2011 rent and has not paid July 2011 rent and therefore will incur late fees of \$20.00 for each of those months. Consequently, I find that the Tenant owes the following amount:

January 2011:	\$585.00
Late fee:	\$20.00
February 2011:	\$585.00
Late fee:	\$20.00
March 2011:	\$585.00
Late fee:	\$20.00
April 2011:	\$585.00
May 2011:	\$585.00
Late fee:	\$20.00
June 2011:	\$585.00
Late fee:	\$20.00
July 2011:	\$585.00
<u>Late fee:</u>	<u>\$20.00</u>
Subtotal:	\$4,235.00
Less: <u>Payments:</u>	<u>(\$3,585.00)</u>
Balance owing:	\$650.00

Consequently, I find that the Landlord is entitled to a Monetary Order for unpaid rent for July 2011 and late fees in the amount of \$650.00. However, it is a principle of common law that if a Landlord accepts a payment "for rent" from a tenant after the effective date of the 10 Day Notice rather than stating that it is accepted only for "use and occupancy only" then the Landlord is deemed to have reinstated the tenancy. In this case, the

Landlord accepted the Tenant's payment of \$1,200.00 on July 23, 2011 and gave her a receipt for "rent." In doing so, I find that the Landlord reinstated the tenancy and as a result, the 10 Day Notice to End Tenancy dated June 26, 2011 is cancelled and the Landlord's application for an Order of Possession dismissed without leave to reapply.

As both parties have been partially successful on their respective applications, I find that any award made to recover the filing fees they each paid would be offsetting and as a result, I make no order reimbursing either party for their filing fees.

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Conclusion

The Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 26, 2011 is cancelled and the Landlord's application for an Order of Possession is dismissed without leave to reapply. A Monetary Order in the amount of **\$650.00** has been issued to the Landlord and a copy of it must be served on the Tenant. If the amount is not paid by the Tenant, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order 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 *Manufactured Home Park Tenancy Act*.

Dated: July 26, 2011.

Residential Tenancy Branch