



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPC, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

The Landlord's agent said on September 29, 2011 he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail. Section 83 of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later (even if they refuse to pick up that mail). Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 82 of the Act and the hearing proceeded in the Tenant's absence.

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

This fixed term tenancy started on April 1, 2011 and expired on September 30, 2011. Rent is \$350.00 per month payable in advance on the 1st day of each month. The manufactured home is not owned by the Tenant. The Landlord's agent said the Tenant had rent arrears for August 2011 and did not pay rent when it was due for September 2011. Consequently, on September 2, 2011, the Landlord's agent posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 2, 2011 on the rental unit door. The Landlord's agent said the Tenant has not paid the rent arrears.

The Landlord's agent also claimed that at this time, he noticed that one of the doors to the manufactured home had been removed and another had been kicked in. The Landlord's agent said it appeared that the Tenant had not been residing there for some time as there was rotting food and the hydro had been cut off. Consequently, the Landlord's agent said he removed some of the Tenant's belongings, put them in the parking lot and secured the manufactured home. However, on September 8, 2011, the Landlord's agent said he received a call from the RCMP who said the Tenant's spouse had made a complaint about the removal of the items. Consequently, the Landlord's agent said he replaced the items and was advised by the Tenant's spouse that she and the Tenant would collect them the following day however they did not do so. The

Landlord's agent said he found a letter from the Tenant posted to the manufactured home door on September 24, 2011 which stated that the Tenant intended to remove his items over the following 2 days but he failed to return to the manufactured home site again. The Landlord's agent the manufactured home site is littered with a substantial amount of the Tenant's possessions and some garbage.

Analysis

Section 34 of the Regulations to the Act states as follows:

- (1) A Landlord may considered that a tenant has abandoned personal property if
 - (a) The tenant leaves the personal property on a manufactured home site that he or she has vacated after the tenancy agreement has ended, or
 - (b) Subject to subsection (2), the tenant leaves the personal property on a manufactured home site
 - (i) that for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
 - (ii) from which the tenant has removed substantially all of his or her personal property.
- (2) The Landlord is entitled to consider the circumstances described in paragraph (1)(b) as abandonment only if
 - (a) the Landlord receives an express oral or written notice of the tenant's intention not to return to the manufactured home site, or
 - (b) the circumstances surrounding the giving up of the manufactured home site are such that the tenant could not reasonably be expected to return to the manufactured home site.

I find that the Tenant has not ordinarily occupied the manufactured home site since September 5, 2011 and has not paid pad rent for August, September and October 2011. I also find that while the Tenant indicated an intention in his letter of September 24, 2011 to remove his belongings by September 26, 2011, he has failed to do so and has had no further contact with the Landlord. Consequently I find that the Tenant is not reasonably expected to return to the manufactured home site and is thereby deemed to have abandoned the manufactured home site. As a result, the Landlord may remove any items left on the manufactured home site by the Tenant and deal with them as required under s. 35 of the Regulations to the Act.

In the absence of any evidence from the Tenant to the contrary, I find that the Landlord is entitled to recover rent arrears for August and September 2011 in the total amount of \$700.00. I also find that the Landlord is entitled pursuant to s. 65(1) of the Act to recover from the Tenant the \$50.00 filing fee for this proceeding.

Conclusion

The Landlord's application for an Order of Possession is dismissed without leave to reapply. A Monetary Order in the amount of \$750.00 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: October 26, 2011.

Residential Tenancy Branch