



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNDC, FF

Introduction

This matter dealt with an application by the Landlords 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.H.) said on September 30, 2011 he served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail. According to the Canada Post online tracking system, the Tenant received this mail on October 6, 2011. Based on the evidence of the Landlords, I find that the Tenant was served with the Landlords' 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. Do the Landlords have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This tenancy started approximately 2 years ago. Pad rent is \$260.00 per month payable in advance on the 1st calendar day of each month. The Landlord (S.H.) said the Tenant had rent arrears for July and August 2011 and did not pay rent for September 2011 when it was due and as a result, on September 20, 2011, he posted a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated September 19, 2011 on the Tenant's door. The Landlord said the Tenant has not paid these rent arrears and had not paid rent for October 2011.

Analysis

The copy of the 10 Day Notice to End Tenancy dated September 19, 2011 (at the top of the first page) states that there are rent arrears of \$780.00 however the box stating when the arrears were due is blank. The Landlord claimed that this was an inadvertent omission and that it should have stated September 1, 2011 and that the Tenant would have been aware of this.

Section 61 of the Act says that “if a Notice to End Tenancy does not comply with s. 45 of the Act, the director may amend the notice if satisfied that the person receiving the notice knew, or should have known, the information that was omitted from the notice, and in the circumstances, it is reasonable to amend the notice. In the absence of any evidence from the Tenant to the contrary, I find that he would have known that the rent arrears alleged were due on September 1, 2011 (or for the months July, August and September 2011 as is also indicated on the Landlord’s Application for Dispute Resolution). In the absence of any other deficiencies on the 10 Day Notice to End Tenancy dated September 19, 2011, I find that it would be reasonable to amend it by adding “September 1, 2011” as the date the rent arrears were due.

Section 39(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or (if they believe the amount is not owed) apply for dispute resolution. If a Tenant fails to do either of these things, then under section 39(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the manufactured home site at that time. Under s. 83(c) of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted or on September 23, 2011. Consequently, the Tenant would have had to pay the rent arrears stated on the Notice or apply to dispute that amount no later than September 28, 2011.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 48(2)(b) of the Act that the Landlords are entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. I also find that the Landlords are entitled to recover rent arrears for July, August and September 2011 in the amount of \$780.00. I further find that the Landlords are entitled to recover unpaid rent for October 1 – 20, 2011 in the pro-rated amount of \$167.74 as well as a loss of rental income for the period, October 21 – 31, 2011 in the pro-rated amount of \$92.26. As the Landlords have been successful in this matter, they are also entitled pursuant to s. 65(1) of the Act to recover from the Tenant the \$50.00 filing fee they paid for this proceeding.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,036.00** have been issued to the Landlords. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 20, 2011.

Residential Tenancy Branch