



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR  
                              MNSD, FF

### Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the tenant is to cancel a notice to end tenancy for unpaid rent. The application by the landlord is for an order of possession for unpaid rent, an order of possession for cause, an order of possession for breach, a monetary order for unpaid rent and recovery of the filing fee. Both parties participated in the conference call hearing.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

This tenancy began November 2010 with monthly rent of \$1300.00 and the tenant paid a security deposit of \$650.00.

The park manager served the sublet tenants CM and JP with a 1 Month Notice to End Tenancy for Cause on June 23, 2011; neither tenant has filed to dispute this notice.

The landlord served the tenants CM and SM and sublet tenants JP and JJ, a 10 Day Notice to End Tenancy for Unpaid Rent on November 4, 2011; the tenants have not filed to dispute this notice, the sublet tenant has filed to dispute this notice.

The tenants CM and SM purchased this mobile home in the fall of 2008 but to date have not transferred the title of the mobile home into their name. On December 20, 2008 the tenants CM and SM and sublet tenant JP signed a Rent to Own Agreement for purchase of the mobile home and this agreement identifies the tenants CM and SM as the landlord for the sublet tenant JP.

On December 23, 2011 the sublet tenants completed an Application for Tenancy; this application is not signed by the landlord or park manager. This document notes that the

pad rent will be paid to the landlord by the tenants CM and SM until the sublet tenant JP has fulfilled the terms of the Rent to Own Agreement.

The landlord testified that at this time the tenant's owe the landlord 3 months of pad rent which totals \$750.00. The landlord stated that the tenants have continually been behind on their rent and that the landlord has had a number of rent cheques returned to her as NSF. The landlord stated that she would contact the tenants after a rent cheque was returned and the tenants on 3 occasions then sent a cashier's cheque to the landlord. The landlord stated that due to the delay in this process another month's rent would then come due and the landlord in order to track the monthly rent payments more easily, the landlord would apply the cashier's cheque to the oldest month of outstanding rent in the ledger. The landlord stated that the ledger shows 3 months of unpaid pad rent due to the landlord.

The tenants testified that they knew there was 3 months rent owing to the landlord but that they were not sure what 3 months. The tenants acknowledged that they did not pay the outstanding rent after receiving the notice to end tenancy for unpaid rent. The tenants stated that they did not file to dispute the notice for unpaid rent as when they went to the Service BC office they were told it was too late to file because the 5 days had passed. The tenants also stated that a cashier's cheque was mailed to the landlord and has possibly gone missing but that they have not taken any steps to track the missing payment. The tenants repeated that they did not know which 3 month's rent was unpaid for however again acknowledged that 3 months pad rent was due.

The sublet tenant JP stated that he has always paid his rent on time to the tenants and that he was very unhappy about being caught between the landlord and tenants.

The landlord stated that she has continued to work with the tenants since 2008 in regards to their late rent payments and NSF rent cheques but that she is not longer willing to do so. The landlord stated that she wanted to proceed with an order of possession for unpaid rent and monetary order for unpaid rent.

As the landlord accepted rent after serving the June 23, 2011 notice to end tenancy for cause, this notice has been rendered ineffective and any matters related to this notice are hereby dismissed.

### Analysis

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 pay the overdue rent or apply for dispute resolution. If the 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 ends on the effective date of the Notice and they must vacate the rental unit at that time.

The landlord has submitted evidence of NSF rent cheques and the tenants acknowledged that 3 months pad rent in the amount of \$750.00 remains unpaid. I therefore find that the landlord is entitled to an order of possession and a monetary order for unpaid rent.

Accordingly I find that the landlord is entitled to a monetary order for \$750.00.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

### **Assignment**

*Assignment is the act of transferring all or part of a tenant's interest in or rights under a lease or tenancy agreement to a third party, who becomes the tenant of the original landlord. In a manufactured home site tenancy, an assignment usually coincides with the sale of the manufactured home.*

*The assignee takes on the obligations of the original tenant commencing at the time of the assignment, and is not responsible for actions or failure of the assignor to act prior to the assignment. Unless the landlord agrees otherwise, the original tenant may retain some residual liability, in the event of a failure of the assignee to carry out the terms of the tenancy agreement or lease.*

### **Subletting**

*A sublease is a lease given by the tenant or lessee of residential premises to a third person (the sub-tenant or sub-lessee). A sublease can convey substantially the same interest in the land as is held by the original lessee, however such a sublease must be for a shorter period than the original lease in order that the original lessee can retain a reversionary interest in the property. The sub-tenant does not take on any rights or obligations of the original tenancy agreement that are not contained in the subagreement, and the original lessee remains the tenant of the original lessor, and is the landlord of the sub-tenant.*

The current status of the Rent to Own Agreement between the tenants and sublet tenant was not discussed and that is a matter that the sublet tenant may need to pursue outside of this court as the Manufactured Home Park Tenancy Act does not have jurisdiction over such matters.

The sublet tenant's application to set aside the notice to end tenancy for unpaid rent is dismissed without leave to reapply as this notice has been set aside.

### **Conclusion**

I hereby grant the landlord an **Order of Possession** effective not later than **1:00 PM, December 10, 2011**. This Order must be served on the tenant(s) and may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim for \$750.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I grant the landlord a monetary order under section 67 for the amount of **\$800.00**.

If the amount is not paid by the tenant(s), 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 Act*.

Dated: November 28, 2011.

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Residential Tenancy Branch