

DECISION

Dispute Codes:

OPR; MNR

Introduction

This is the Landlord's application for an Order of Possession and a Monetary Order for unpaid rent and late fees.

The Landlord and his agent gave affirmed testimony at the Hearing.

The Landlord's agent testified that he hand delivered the Notice of Hearing documents to the Tenant on January 4, 2012, at the rental site.

Based on the affirmed testimony of the Landlord's agent, I am satisfied that the Tenant was duly served with the Notice of Hearing documents on January 4, 2012. Despite being served with the Notice of Hearing documents, the Tenant did not sign into the teleconference and the Hearing proceeded in his absence.

Issues to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order, and if so, in what amount?

Background and Evidence

The Landlord and his agent gave the following testimony and evidence:

There is no written tenancy agreement between the parties. Monthly pad rent is \$200.00 per month. The Landlord stated that rent is due on the first day of each month, but that as long as he receives it by the 5th day of the month, he is satisfied. Therefore, I find that rent is due on the 5th day of each month.

The Landlord's agent testified that the Tenant was behind in rent payments so he issued a 10 Day Notice to End Tenancy on December 13, 2011, and posted it to the Tenant's door on the same day. The Landlord's agent testified that the Tenant has not paid any of the outstanding rent and that he remains on the rental site.

The Landlord testified that he is seeking unpaid rent for the months of September, October, November and December, 2011, in the total amount of \$800.00. In addition, the Landlord seeks late fees of \$35.00 per month for a total of \$140.00.

Analysis

I accept that Landlord's agent's undisputed testimony that he served the Tenant with the Notice to End Tenancy by posting the Notice on the Tenant's door on December 13, 2011. Pursuant to the provisions of Section 83 of the Act, service in this manner is deemed to be effected three days after posting the documents. The Tenant did not pay the arrears, or file for dispute resolution, within 5 days of receiving the documents. Therefore, pursuant to the provisions of Section 39(5) of the Act, the Tenant is conclusively presumed to have accepted that the tenancy ended on December 26, 2011. I find that the Tenant is overholding and that the Landlord is entitled to an Order of Possession **effective 2 days after service of the Order upon the Tenant**.

Based on the undisputed testimony of the Landlord, I find that he has established a monetary claim for loss of rent in the total amount of **\$800.00**.

I find that the Landlord is not entitled to late fees. Section 5(1) of the Regulations provides that a landlord may charge an administration fee of **not more than \$25.00** for late payment of rent, but Section 5(2) of the Regulations provides that **such a fee may not be charged unless the tenancy agreement provides for that fee**. In this case, there is no written tenancy agreement and therefore this portion of the Landlord's application is dismissed.

Conclusion

I hereby provide the Landlord an Order of Possession **effective 2 days after service of the Order upon the Tenant**. This Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

I hereby provide the Landlord a Monetary Order in the amount of **\$800.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims) 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: January 17, 2012.

Residential Tenancy Branch