



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for an order of possession, a monetary order and to recover the filing fee.

The tenant joined the telephone conference late; however, the tenant did participate in the hearing.

Both parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an order of possession, a monetary order for unpaid rent and recovery of the filing fee?

Background and Evidence

The landlord's agent testified that the landlord bought the manufactured home park in 1995 and that most of the tenants were long term tenants with no tenancy agreement, which is the case in this situation.

The landlord's agent submitted that although there was an attempt in 2009 to have the tenant sign a tenancy agreement, the attempt was not successful.

The landlord's agent submitted that monthly pad rent is now \$100.00, payable quarterly in advance, more particularly, \$300.00 every three months.

The landlord gave affirmed testimony and supplied evidence that the tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") on January 25, 2012, by registered mail. The Notice stated the amount of unpaid rent was \$300.00, for January, February and March 2012.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

The landlord provided evidence and gave affirmed testimony that the tenant has not made any rent payments since issuance of the Notice and currently owed unpaid rent of \$300.00 through the date of the hearing.

The tenant stated that he vacated the premises within ten days as a result of receiving the Notice.

Upon query, the landlord's agent stated that she was unaware that the tenant had vacated.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the landlord to prove damage or loss.

As the tenant has vacated the premises, I find that the landlord is no longer in need of an order of possession.

I accept the testimony of the tenant that he vacated the premises within ten days of receiving the Notice, and therefore find that the landlord no longer is in need of an order of possession.

As to the landlord's request for a monetary order, as I have accepted that the tenant vacated the premises in early February 2012, I do not allow the landlord's claim for unpaid rent for March 2012. I find that rent for March was not yet due at the time the tenant vacated and through no fault of the tenant's, the landlord did confirm the vacancy. Therefore the landlord did not establish that they had made attempts to mitigate their loss for the month of March 2012.

Conclusion

I find that the landlord has established a total monetary claim of **\$250.00** comprised of unpaid rent of **\$200.00** for January and February 2012, and the **\$50.00** filing fee paid by the landlord for this application.

I am enclosing a monetary order for \$250.00 with the landlord's Decision. This order is a **final, legally binding order**, and may be filed in the Provincial Court of British Columbia (Small Claims) should the tenant fail to comply with this monetary order.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 15, 2012.

Residential Tenancy Branch