



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, 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 application named two persons as Tenants, namely C.P. and S.P. The Landlord said he served the Tenants on July 13, 2012 by registered mail with a copy of the Application and Notice of Hearing to the manufactured home site address. The Landlord admitted, however, that the Tenant, S.P., has not resided on the manufactured site for approximately two years. Section 82(1) of the Act says that an application of this nature (ie. for an Order of Possession and a Monetary Order) must be served on the Tenants either in person or by registered mail to the address where the Tenant resides. Consequently, I find that the Tenant, S.P., was not served with the Landlord's hearing package as required by s. 82 of the Act and the pleadings are amended to remove her as a party. However, I find that the Tenant, C.P., was served with the Landlord's hearing package as required by s. 82 of the Act and the hearing proceeded in his 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 tenancy started on March 27, 2010. Rent is \$389.80 per month payable in advance on the 1st day of each month plus \$50.00 per month for utilities.

The Landlord said the Tenant did not pay rent for July 2012 when it was due and as a result on July 2, 2012, he served the Tenant in person with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 2, 2012. The Landlord said the Tenant has not paid the outstanding rent and utilities for July 2012 and has not paid rent or utilities for August 2012.

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 either pay the overdue rent or if the rent is not owed, he must apply for dispute resolution. If a Tenant fails to do either of these things, then under section 39(5) of the Act, he is 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.

I find that the Tenant was served in person on July 2, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. Consequently, the Tenant would have had to pay the rent arrears stated on the Notice or apply to dispute that amount no later than July 9, 2012 (given that the 7th fell on a non-business day). 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 Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

I also find that the Landlord is entitled to recover rent arrears of \$389.80 and utility arrears of \$50.00 for July 2012. Although the Tenant has not yet paid rent for August 2012, I am unable to grant him compensation for unpaid rent or a loss of rental income at this time given that rent is due on the 1st of the month so that it is not yet outstanding for August 2012. However, the Landlord may re-apply for any loss of rental income he incurs as a result of the Tenant's failure to vacate the manufactured home site. I further find that the Landlord is entitled pursuant to s. 65(1) of the Act to recover from the Tenant the \$50.00 filing fee he 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 **\$489.80** have been issued to the Landlord. 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: August 01, 2012.

Residential Tenancy Branch