



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, OPR, OPL

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent and for compensation for damage to the unit, site or property.

At the start of the conference call it was determined that there were two separate tenancies in the Landlord's application. The Landlord was told by the Arbitrator that only one tenancy can be dealt with in one application. The Landlords agreed that there were two separate tenancies and the Landlords choose to deal with the tenancy of the Tenant (D.B.). The tenancy involving Tenant (J.S.) is dismissed with leave to reapply.

The Landlords said they served the Tenant with the Application and Notice of Hearing (the "hearing package") by registered mail on July 16, 2013. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded in the Tenant's absence.

Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?
4. Is there damage to the unit, site or property and is the Landlord entitled to compensation for the damage?

Background and Evidence

This tenancy started on October 1, 2012 as a 1 month to month tenancy. Rent is \$1,000.00 per month payable in advance of the 1st day of each month. No security deposit was required.

The Landlord said he service a 10 Day Notice to End the Tenancy on June 19, 2013 in person to the Tenant on June 19, 2013. The Landlord continued to say the Tenant has not paid rent of \$1,000 for each month for April, May, June, July and August 2013. The Landlord said the total unpaid rent is \$5,000.00.

The Landlord further indicated that the Tenant is living in his trailer on the property and the Landlord requested an Order of possession for as soon as possible.

The Landlord also requested compensation for cleanup of the site which the Landlord estimated to be \$1,000.00 as the work has not been done to date.

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.

Under s. 83 of the Act, the Tenant is deemed to have received the Notice to End on the day it was personally delivered to him, or on June 19, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than June 24, 2013.

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 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent for April, May, June, July and August, 2013 in the total amount of \$5,000.00.

For a monetary claim for damage of loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

As the Landlord testified that the clean up expenses are only an estimate and the work has not been done as of yet, I dismiss the Landlord's damage claim of \$1,000.00 with leave to reapply after the expenses have been incurred and paid.

As the Landlords have been successful in this matter they will receive a monetary order for the balance owing as following:

Rent arrears:	\$5,000.00	
Subtotal:		\$5,000.00
Balance Owing		\$5,000.00

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$5,000.00 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 *Manufacture Home Park Tenancy Act*.

Dated: August 20, 2013

Residential Tenancy Branch

