



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0849226 B. C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: CNR, MNDC, PSF, RR, FF
OPR

Introduction

This hearing was scheduled in response to the tenant's application for cancellation of a notice to end tenancy for unpaid rent / a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / an order instructing the landlord to provide services or facilities required by law / permission to reduce rent for repairs, services or facilities agreed upon but not provided / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

During the hearing the landlord's agent requested an order of possession in the event the tenant's application for cancellation of the notice to end tenancy does not succeed.

Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

The unit which is the subject of this dispute is a manufactured home ("trailer") located within a manufactured home park ("trailer park"). There are 2 tenants. The tenants do not own the trailer. There is no written tenancy agreement in evidence for the tenancy which began on March 15, 2013. While there are 2 tenants, "LAS" and "GM," only tenant "LAS" is named on the application for dispute resolution.

Rent is due and payable in advance on the first day of each month. The landlord claims that monthly rent is \$1,300.00. The tenants claim that monthly rent is \$650.00. There also appears to be a dispute around whether a security deposit of \$325.00 or \$650.00 was collected.

Arising from rent which was unpaid when due on October 1, 2013, the landlord issued a 10 day notice to end tenancy for unpaid rent dated October 5, 2013. The notice was served in-person on that same date. A copy of the notice was submitted in evidence. While the amount shown on the notice as overdue is \$975.00, during the hearing the landlord testified that \$25.00 of this amount is a fee assessed for late payment of rent. The landlord claimed that the balance of the outstanding amount is comprised of \$300.00 from September and \$650.00 from October.

The date shown on the above notice by when the tenants must vacate the unit is October 16, 2013. Subsequently, tenant "LAS" filed an application to dispute the notice on October 9, 2013. The landlord claims that no portion of the \$975.00 shown on the above notice was thereafter paid.

Arising from rent which was unpaid when due on November 1, 2013, the landlord issued a second 10 day notice to end tenancy for unpaid rent, this one dated November 2, 2013. It is not clear how this notice was served. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenants must vacate the unit is November 12, 2013. The amount shown as overdue is \$1,325.00, and the landlord testified that \$25.00 of this amount is a fee assessed for late payment of rent. The landlord testified that the tenants subsequently made a payment in the limited amount of \$650.00 on November 5, 2013. Both tenants continue to reside in the unit.

The tenants claim that work on the water and sewer systems within the trailer park during a 3 month portion of their tenancy has led to limited availability of water during some days, as well as limited road access to the rental unit. As a result, the tenants seek compensation of \$3,600.00, which is calculated on the basis of \$40.00 per day over a 90 day period. The landlord testified that the tenants were advised of these potential and temporary inconveniences at the start of tenancy.

Analysis

Based on the testimony of the parties and documentary evidence which includes, but is not limited to, receipts issued by the landlord in exchange for rent and a security deposit, and a Shelter Information Form issued by the Ministry of Social Development with regard to tenant "LAS," I find that the monthly rent is \$1,300.00, and that a security deposit of \$650.00 was collected.

I further find that the tenants were served with a 10 day notice to end tenancy for unpaid rent dated October 5, 2013. While tenant "LAS" filed an application to dispute the notice within 5 days of receiving it, I find that the tenants did not pay the full amount of

outstanding rent within 5 days of receiving the notice. The tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice. Accordingly, the tenant's application for cancellation of the notice is hereby dismissed, and I find that the landlord has established entitlement to an **order of possession**. In this regard, section 55 of the Act which addresses **Order of possession for the landlord**, provides in part as follows:

55(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,

- (a) the landlord makes an oral request for an order of possession, and
- (b) the director dismisses the tenant's application or upholds the landlord's notice.

Beyond the landlord's oral request during this hearing for an order of possession, I have no application before me from the landlord, and I make no finding with regard to what amount of rent may presently be outstanding.

Section 27 of the Act addresses **Terminating or restricting services or facilities**, and provides in part as follows:

27(2) A landlord may terminate or restrict a service or facility, other than one referred to in subsection (1), if the landlord

- (a) gives 30 days' written notice, in the approved form, of the termination or restriction, and
- (b) reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Based on the documentary evidence and testimony, I find on a balance of probabilities that the tenants have suffered a temporary and limited restriction of services and facilities related to availability of water and road access to the rental unit. In the result, I find that the tenant has established entitlement to compensation in the limited amount of **\$225.00**, which is calculated on the basis of \$2.50 per day over 90 days (\$2.50 x 90).

As the tenant has partially succeeded with her application, I find that she has also established entitlement to recovery of **\$25.00**, which represents half the filing fee.

The tenancy nears an end and the tenant has established limited entitlement to compensation arising from the temporary and limited restriction of services or facilities. In the result, I find there is no requirement that I issue an order instructing the landlord to provide services or facilities required by law. This aspect of the tenant's application is therefore hereby dismissed.

As the end of tenancy nears, the attention of the parties is drawn to section 38 of the Act which addresses **Return of security deposit and pet damage deposit**.

Conclusion

I hereby issue an **order of possession** in favour of the landlord effective not later than **two (2) days** after service on the tenants. This order must be served on the tenants. Should the tenants fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of tenant "LAS" in the amount of **\$250.00** (\$225.00 + \$25.00). Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court 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 *Residential Tenancy Act*.

Dated: November 15, 2013

Residential Tenancy Branch

