



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OPR, MNR, & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was sufficiently served on the Tenant by posting on the Tenant on November 5, 2014. I find that the 10 day Notice to End Tenancy for non-payment of rent was sufficiently served on the tenant by posting on November 5, 2014. Further I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the Tenant by mailing, by registered mail to where the tenant resides on November 17, 2014. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?

d. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

In June 2014 the tenant DB allegedly purchased the manufactured home from JW. However, those documents have not been registered in the appropriate registry.

The parties agree the rent for the manufactured home pad was \$560.91 for the period June to September. The rent was increased and commencing October 1, 2014 the rent is \$578.15 payable in advance on the first day of each month.

There is a dispute as to whether the tenant has paid the rent and when the rent was paid. The landlord testified as to the following:

<u>Date</u>	<u>Amount of Rent Owing</u>	<u>Payment Made</u>
June	\$560.91	\$550 (by JW on June 11, 2014)
July	\$560.91	
August	\$560.91	\$1000 paid August 27, 2014
Sept.	\$560.91	
Oct.	\$578.15	\$560 paid October 8, 2014
Nov.	<u>\$578.15</u>	<hr/>
Totals	3399.94	\$2110.00

The landlord testified that the tenant owed a balance of \$1289.94 as of November 2, 2014. In addition the tenant owes \$578.15 in rent for December for a total owing of \$1868.09

Since that time the landlord testified the tenant has paid \$560 on November 17, \$130 on November 17, 2014 and \$571 on November 19 for a total of \$1261. Thus the landlord is claiming the sum of \$607.09.

The tenant testified she made payments of \$560 on November 17, \$130 on November 17, 2014, \$572 on November 19, 2014 and a payment of \$560 on November 1, 2014. She testified she made all but one of these payments to the bank in Mission and she produced receipts in support of her testimony. Unfortunately, the tenant failed to follow the Rules of Procedure which requires a respondent to provide documentary evidence at least 7 days before the hearing and only provided these receipts to the landlord last night. The landlord has talked to the bank in Mission and he testified they told him that the employee number on the receipts does not exist as an employee in Mission. He submits the receipts are fraudulent. He has not had sufficient time to obtain materials from the bank to prove the receipts are fraudulent. The landlord further testified the alleged payment that was made on November 1, 2014 in the sum of \$560 has not been made or at least has not reached his account.

If the landlord's evidence is accepted the tenant owes the sum of \$607.09. If the tenant's evidence is accepted the tenant owes the landlord the sum of \$46.09 in outstanding rent.

Tenant's Application

The grounds set out in the one month Notice to End Tenancy are as follows:

Landlord's notice: cause

- 40** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:
- (a) the tenant is repeatedly late paying the rent;
 - ...
 - (c) the tenant or a person permitted in the manufactured home park by the tenant has
 - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park,

- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
 - (iii) put the landlord's property at significant risk;
- (d) the tenant or a person permitted in the manufactured home park by the tenant has engaged in illegal activity that
 - (i) has caused or is likely to cause damage to the landlord's property,
 - (ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the manufactured home park, or
 - ...
- (g) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Policy Guideline #38 provides as follows:

“The *Residential Tenancy Act*¹ and the *Manufactured Home Park Tenancy Act*² both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

The tenant has paid the rent late for the months of July, August, September and October 2014 and November prior to the issuance of the one month Notice. The Policy Guideline provides three late payments are the minimum number sufficient to justify a notice under these provisions. I determined the landlord has established sufficient grounds to end the tenancy on the basis of repeated late payment of rent and I ordered tenant's application to cancel the one month Notice be dismissed.. Given my determination on the repeated late payment it is not necessary to consider the other grounds in the Notice to End Tenancy.

Landlord's Application - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The tenant's application to cancel the one month Notice to End Tenancy has been dismissed. The tenant did not apply to cancel the 10 day Notice to End Tenancy. The tenant's application would have been dismissed had she made such an application as the tenant failed to pay the arrears within the 5 days that would void the Notice to End Tenancy. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession. I am aware that we are dealing with a manufactured home. **In the circumstances I determined that it was appropriate to set the effective date of the Order for Possession for December 31, 2014.**

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee

If the landlord's evidence is accepted the tenant owes the sum of \$607.09. If the tenant's evidence is accepted the tenant owes the landlord the sum of \$46.09 in outstanding rent. The tenant's failure to serve the landlord with her documents within 7

days of the date of the hearing has put the landlord in an impossible position as the landlord is effectively prevented from getting the evidence from the bank to prove fraud. However, it may be that the receipt is accurate, the tenant paid \$560 on November 1, 2014 as evidenced in the receipt and there has been a problem in transferring the money. I determined the safest way to deal with this situation is to give the landlord a monetary order in the sum of \$46.09 plus the \$50 filing fee for a total of \$96.09. If the receipt given by the tenant is fraudulent or that the \$560 payment allegedly made on November 1, 2014 did not occur the landlord has the right to file a new application making this claim.

I granted the landlord a monetary order in the sum of \$46.09 plus the sum of \$50 in respect of the filing fee for a total of \$96.09.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: December 10, 2014

Residential Tenancy Branch

