



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR MNR MND

Introduction

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* ("the Act") for:

- an Order of Possession for unpaid rent pursuant to section 48;
- a monetary order for unpaid rent and damage pursuant to section 60; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant confirmed receipt of the landlord's Application for Dispute Resolution on May 25, 2015 by registered mail as well as the 10 Day Notice to End Tenancy for Unpaid Rent ("the 10 Day Notice") on April 15, 2015.

Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent and damage?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord gave evidence that the rental agreement for the premises began in 2004. The monthly rental amount for this site within a manufactured home park is \$230.60 payable on the first of each month. The landlord testified that the tenant has been increasingly late in his rental payments and that he has now accrued several months of rental arrears. There was no written agreement with respect to this tenancy.

The landlord applied for an Order of Possession for unpaid rent for the month of April 2015. The landlord testified that the tenant did not pay rent of \$230.60 due on April 1,

2015. The tenant confirmed that he did not pay any rent for April 2015. The tenant testified that he had a heart attack three years ago and that he cannot work as a result. He testified that he was in hospital approximately three weeks prior to this hearing. He also testified that he has applied for income assistance but, as of the date of this hearing has no money to pay rent.

The landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent on April 15, 2015. The landlord testified that the tenant did not pay the April 2015 rent after receiving the 10 Day Notice. The landlord testified that the tenant owes the following amounts;

- \$230.60 for April rent
- \$230.60 for May rent
- \$230.60 for June rent
- \$230.60 for July rent
- \$135.00 for late fees for December 2014; January 2015, February 2015; March 2015; April 2015 and \$10.00 from a late payment in November 2014.

The landlord sought a monetary award including \$922.40 for four months of unpaid rent and \$210.00 in late charges for 8 months as well as \$10.00 outstanding from November 2014. The landlord also sought to recover the filing fee for this application from the tenant.

The landlord testified that this is not the first time that the tenant has fallen behind in his rental payments. The landlord testified that she has no choice but to end the tenancy before further rental arrears accrue.

Analysis

Section 26(1) of the *Act* establishes that “a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this *Act*, the regulations or the tenancy agreement, unless the tenant has a right under this *Act* to deduct all or a portion of the rent.” The sworn and undisputed testimony of the landlord at this hearing is that the tenant has not paid rent for the months of April, May, June or July 2015. The tenant provided some indication that he may have paid one of these months but had no certainty about rental payments made and acknowledged that it had been months since he had paid rent. I accept the landlord’s testimony in all the circumstances and in consideration of the evidence submitted by the landlord.

The tenant failed to pay the April rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made application pursuant to section 46(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 46(5) of the

Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by May 15, 2015, the date provided by the landlord on the 10 Day Notice. As the tenant has not vacated the premises and site on this manufactured home park, I find that the landlord is entitled to a 2 day Order of Possession.

I find that the landlord is entitled to receive an order to include an amount for unpaid rent for four months at \$230.60 per month for a total of \$922.40. I accept this uncontested evidence offered by the landlord that the tenant has failed to pay rent for the months of April, May, June and July 2015. I am issuing the attached monetary order that includes the landlord's application for \$922.40 in unpaid rent.

The landlord also applied for eight months of late rent payment fees in the amount of \$25.00 per month and \$10.00 for an outstanding amount in late fees from November 2014. While the tenant was candid in his testimony acknowledging his failure to pay rent, the tenant did not provide the same testimony with respect to the late payment fees. As there is no written tenancy agreement to reflect an agreement by the tenant to late payment fees, I find that the landlord is not entitled to recover this amount. I also note this amount is somewhat usurious given that it is more than 10% of the rental amount.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application from the tenant.

Conclusion

I grant the landlords an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary Order in favour of the landlords as follows:

Rental Arrears for four months April, May, June, and July 2015	\$922.40
Recovery of Filing Fee for this application	50.00
Total Monetary Award	\$972.40

The landlord is provided with formal Orders in the above terms. Should the tenant(s) fail to comply with these Orders, these Orders may be filed and enforced as Orders of the Provincial 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 *Residential Tenancy Act*.

Dated: July 10, 2015

Residential Tenancy Branch

