



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 1027110 BC LTD (WESTSTONE GROUP) AND VANCOUVER EVICTION SERVICES
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes OPR, MNR, FF, CNR

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Manufactured Home Park Tenancy Act* (the *Act*). The landlord applied for:

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

The tenants applied for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 39; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing by conference call and gave testimony. Both parties confirmed receipt of the notice of hearing package and the submitted documentary evidence provided by the other party. Based upon the undisputed testimony of both parties, I find that each party was properly served with the notice of hearing package and the submitted documentary evidence as per section 81 and 82 of the *Act*.

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 recovery of the filing fee?

Are the tenants entitled to an order cancelling the 10 Day Notice?

Are the tenant's entitled to a monetary order for recovery of their filing fee?

Background and Evidence

Both parties confirmed that the landlord's agent (the landlord) served the tenants with the 10 Day Notice dated September 3, 2015 by posting it to the rental unit door on September 3, 2015. The tenant, N.M. (the tenants) stated that it was received posted on the door on September 4, 2015.

Both parties confirmed that the 10 Day Notice dated September 3, 2015 sets out that the tenants failed to pay rent of \$560.00 that was due on September 1, 2015 and that the 10 Day Notice displays an effective end of tenancy date of September 13, 2015.

The tenants stated that no rent was paid for September 2015 after receiving the 10 Day Notice as the tenant stated that there was a verbal agreement for the tenants not to pay any rent while in negotiations over the tenancy. The tenants stated that a verbal agreement was made with R.D. who told them not to worry about pad rent. The tenants stated that they interpreted this as not having to pay any pad rent until the issues were resolved.

The landlord disputed the tenants' claims stating that no agreement was made with the tenants. The landlord's witness, R.D. provided affirmed testimony that there was no verbal agreement with the tenants. R.D. stated that he received a list of the tenants' demands because of personal issues and decided to allow the tenants a one-time break in paying pad rent for August 2015 and regular payments were to be made beginning in September 2015. R.D. stated that to allow the tenants to not pay any pad rent indefinitely would be beyond his authority and that anything of that nature would have been in writing and recorded in the corporate accounts. R.D. stated that a notation on the landlord's corporate ledger for the tenant recorded R.D.'s authorization of the one-time break in rent for August 2015.

Analysis

Section 20 of the Act sets out:

A tenant must pay rent when it is due under the tenancy agreement....unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenants claimed that the landlord's witness, R.D. gave verbal permission to stop rent payments for an indeterminate period why negotiations concerning their tenancy were underway. The landlord's agent disputed this and called a witness, R.D. The witness provided direct testimony disputing the tenants' claims that a verbal agreement

was made to stop paying rent while negotiations were underway with the landlord. The witness stated that there were no negotiations and that the witness after hearing the circumstances of the tenants' personal issues authorized a one-time break for the tenants so that they did not have to pay the pad rent for August 2015.

The tenants' advocate called into question the landlord's credibility stating why did the landlord not provide any documentary evidence of the landlord's authorization of the one-time break for the tenants' to pay the pad rent for August 2015. The witness stated that under his limited authority he gave the one-time break to the tenants and that the tenants would not be given access to the tenants' ledger.

The tenants were not able provide any supporting evidence that there was a verbal agreement for entitlement to not pay the pad rent indefinitely or that there was ongoing negotiations.

Pursuant to section 46 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlord's agent testified that the tenants failed to pay rent for September 2015. The tenants admitted that September 2015 rent was not paid.

As the tenant has failed to pay her rent in full when due, I find that the 10 Day Notice issued September 3, 2015 is valid and dismiss the tenant's application to cancel the 10 Day Notice without leave to reapply. As the tenant's application to cancel the 10 Day Notice is dismissed, the landlord was entitled to possession of the rental unit on September 13, 2015, the effective date of the 10 Day Notice. As this date has now passed, the landlord is entitled to an order of possession effective two days after it is served upon the tenant(s).

The tenant admits that she has not paid the September 2015 rent and has failed to provide sufficient evidence that there was a right for the tenants to not pay the rent of \$560.00. I find that the landlord is entitled to this amount.

As the landlord has been successful in their application, I find that the landlord is entitled to recovery of the \$50.00 filing fee.

Conclusion

I issue an order of possession for unpaid rent in the landlord's favor. The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$610.00 consisting of \$560.00 for unpaid rent and \$50.00 for recovery of the filing fee. The tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with these orders, these orders may be filed in the Small Claims Division of the Provincial Court and enforced as orders 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 *Manufactured Home Park Tenancy Act*.

Dated: October 23, 2015

Residential Tenancy Branch

