



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, FF

Preliminary Issues

The landlord applied under the *Manufactured Home Park Tenancy Act (Act)*; however, s. 4 of the *Act* states:

This *Act* does not apply with respect to any of the following:

(a) a tenancy agreement under which a manufactured home site and a manufactured home are both rented to the same tenant;

Consequently, I have amended the landlord's application to be heard under the *Residential Tenancy Act (Act)*

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; and to recover the filing fee from the tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*; served by registered mail on October 29, 2015. Canada Post tracking numbers were provided by the landlord in documentary evidence.

The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to a Monetary Order for damage to the unit, site or property?

Background and Evidence

The landlord testified that this tenancy started on May 03, 2015. The parties agreed that this would be a rent to own agreement with the tenant paying \$445.00 per month towards the cost of owning the mobile home and \$315.00 per month for the pad rent. The tenant did not sign this agreement or pay the deposit and the landlord informed the tenant that her rent for the mobile home and pad would therefore be \$800.00 per month under a rental agreement.

The landlord testified that the tenant only paid \$315.00 rent for May, June, July and August and therefore the tenant owes \$1,940.00 for the remainder of the rent. The tenant failed to pay any rent for September, October, November or December and owes an additional \$3,200.00.

The landlord testified that the tenant was served a 10 Day Notice to End Tenancy by posting it to her door on October 02, 2015. This Notice had an effective date of October 12, 2015. The tenant has not paid any rent since being served with this Notice and has not disputed the Notice.

The landlord seeks a Monetary Order to recover the unpaid rent of \$5,140.00. The landlord also seeks an Order of Possession effective as soon as possible.

The landlord testified that the tenant broke two of the front picture windows in the home. The tenant has not repaired these windows and has put cardboard up at the window. The landlord obtained two quotes for these replacement windows. The first quote was higher at \$1,800.00 at the second quote was for \$1,040.73. The landlord seeks to recover the lower amount for this repair from the tenant.

The landlord also seeks to recover the filing fee of \$100.00

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

With regard to the landlord's claim for unpaid rent; I refer the parties to s. 26 of the Act which states:

26. 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.

I am satisfied from the evidence before me that the tenant had agreed to a rent to own agreement initially but failed to pay the deposit required or to sign the agreement. I am therefore satisfied that this then became a verbal residential tenancy agreement for \$800.00 per month. The landlord's evidence shows that the tenant has failed to pay all the rent for May, June, July and August, 2015 and no rent for September, October, November or December, 2015. Consequently, based on the undisputed evidence before me, the landlord has established a claim to recover unpaid rent of \$5,140.00.

I have reviewed all documentary evidence and accept that the tenant has been served with the Notice to End Tenancy pursuant to section 88 of the *Residential Tenancy Act*. The Notice is deemed to have been received by the tenant on October 05, 2015, three days after it was posted pursuant to s. 90(c) of the *Act*. The Notice states that the tenant has five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay all the outstanding rent within five days as stated above nor did the tenant apply to dispute the Notice within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 46(5) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice, which has been amended to October 15, 2015 pursuant to s. 53 of the *Act*. As this date has since passed I grant the landlord an Order of Possession effective two days after service upon the tenant.

With regard to the landlord's claim for damage to the mobile home; I am satisfied from the undisputed evidence before me that the tenant has broken two windows in the front of this home. The landlord has chosen the cheaper of two quotes in order to mitigate any loss for this damage. I find therefore that the landlord has established a claim to recover the amount of \$1,040.73 from the tenant.

As the landlords claim has merit I find the landlord is entitled to recover the filing fee of \$100.00. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$5,140.00
Damage to the windows	\$1,040.73
Filing fee	\$100.00
Total amount due to the landlord	\$6,280.73

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$6,280.73** pursuant to s. 67 and 72(1) of the *Act*. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

The landlord has been issued an Order of Possession effective **two (2) days** after service upon the tenant pursuant to section 55(1) of the *Act*. This Order must be served on the tenant. If the tenant remains in Possession of the rental unit and does not relinquish that possession to the landlord then the Order may be filed in the Supreme Court of British Columbia 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 23, 2015

Residential Tenancy Branch

