



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR, AAR, OPT, OPR, MNR, FF

Introduction

This hearing dealt with two related applications. One was the landlord's application for an order of possession based upon a 10 Day Notice to End Tenancy for Non-Payment of Rent and a monetary order for unpaid rent. The other was the tenant's application for orders setting aside the 10 Day Notice to End Tenancy for Non-Payment of Rent, granting her access to the rental unit and granting her an order of possession of the rental unit. Although served with the landlords' Application for Dispute Resolution and Notice of Hearing by personal service on October 23, 2015, and despite being the applicant on one of these applications, the tenant did not appear. I waited for 10 minutes for the tenant to appear at the hearing. When she did not, I proceeded to hear the landlord's evidence.

Issue(s) to be Decided

- Is the 10 Day Notice to End Tenancy for Non-Payment of Rent dated October 13, 2015 valid?
- Should an order of possession be granted and, if so, on what terms?
- Should a monetary order be made and, if so, on what terms?

Background and Evidence

This month-to-month tenancy commenced April 1, 2013. The tenant moved into the unit with her common-law husband and their two children. Her common-law husband is the brother of one of the landlords. The landlords own the manufactured home and pay the pad rent to the manufactured home park. The parties had an oral agreement for the payment of rent in the amount of \$1250.00 every month. The landlords filed copies of the bank receipts and personal receipts for payments up to and including August 1, 2015. A security deposit was not paid.

The husband moved out of the rental unit with the children in June 2015. At first he and the children stayed with the landlords but he has now rented a place of his own.

The landlords forgave the September rent payment.

On October 6, 2015, there was a dispute resolution hearing between the same parties. The hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause. The tenant was successful on that application. The tenancy was continued and an order was made allowing the tenant to deduct the \$50.00 filing fee from future rent. In the hearing the landlords testified that the monthly rent was \$1250.00 and is due on the first day of the month.

The landlords did not receive any money for October and on October 13 they issued and personally served the tenant with the 10 Day Notice to End Tenancy for Non-Payment of Rent.

The tenant disputed the notice. In the letter filed with her application the tenant said she has no contractual relationship with the landlords, only her ex-husband does, and that since he was the one with the agreement with the landlord the notice to end tenancy should have been served on him.

The tenant has not paid any rent for October, November and December and the arrears total \$3750.00.

Analysis

The tenant is either a tenant of the landlords, in which case she is obliged to pay rent, or if she is not a tenant she is merely an occupant and has no legal right to stay in the unit after the tenant moved out. As an occupant she is responsible for rent while she occupies the rental unit.

The tenant has at least twice asserted her status as a tenant in Residential Tenancy Branch proceedings by filing applications to set aside notices to end tenancy.

As the tenant did not appear her application is dismissed in its entirety.

Section 55(1) of the *Residential Tenancy Act* provides that if a tenant makes an application to set aside a landlord's notice to end a tenancy and the application is dismissed, the arbitrator must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing, the landlord makes an oral request for an order of possession.

The landlord did make an oral request for an order of possession. The landlords are entitled to an order of possession effective two days after service on the tenant

I find that the landlords have established a total monetary claim of \$3800.00 comprised of unpaid rent for October, November and December in the amount of \$3750.00 and the \$50.00. Pursuant to section 67 I grant the landlords a monetary order in this amount.

Conclusion

- a. An order of possession effective two days after service is granted to the landlords. If necessary, this order may be filed in the Supreme Court and enforced as an order of that Court.
- b. A monetary order in the amount of \$3800.00 has been made in favour of the landlords. If necessary, this order may be filed in 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 17, 2015

Residential Tenancy Branch

