



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR & FF

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$ for unpaid rent and damages
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of a representative of the applicant and in the absence of the respondent although duly served. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

I ordered that the name of the landlord set out in the Notice to End Tenancy be amended to identify the landlord as the numbered company set out in the style of cause of the Application for Dispute Resolution. I ordered that the name of the respondent be amended so this corresponds to the name in the style of cause (MTV). I further amended the Application for Dispute Resolution to provide that the application is being brought under the *Manufactured Home Park Tenancy Act, SBC 2002, c. 77*.

The Manufactured Home Park Tenancy Act permits a party to serve another by mailing by registered mail to where the other party resides. It is deemed received 5 days later. The Supreme Court of British Columbia has held that a party cannot avoid service by refusing to pick up their registered mail. I find that the 10 day Notice to End Tenancy was served on the Tenant by mailing, by registered mail to where the Tenant resides on August 3, 2016 and it is sufficiently served even though the Tenant failed to pick it up. 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 August 19, 2016 and it was sufficiently served even though the Tenant failed to pick up the documents. The Application for Dispute Resolution/Notice of Hearing was also served on the Tenant by posting on August 22, 2016. 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 landlord is entitled to an Order for Possession?
- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

The tenancy commenced prior to March 2015 when the landlord took possession of the manufactured home park. The rent is \$560 per month payable in advance on the first day of each month.

The tenant(s) failed to pay the rent for August when due on August 1, 2016. The landlord served a 10 day Notice to End Tenancy on the Tenant by mailing, by registered mail to where the tenant resides on August 3, 2016. It is deemed received 5 days later.

Another party paid the rent on August 16, 2016. The landlord accepted the payment for "use and occupation only."

The tenant failed to pay the rent for September and October when due. The rent for those two months was paid by another party on October 7, 2016. The landlord accepted the payment for "use and occupation only."

The tenant(s) have remained in the rental unit.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. The Tenant failed to pay the rent when due on August 1, 2016. The landlord served a 10 day Notice to End Tenancy on the Tenant by mailing, by registered mail to where the Tenant resides on August 3, 2016. The Residential Tenancy Act provides that it is deemed received 5 days later. Once the Notice was deemed received the Tenant had 5 days to pay the rent. If the rent was paid within that 5 day period the Notice would be void. The tenant failed to pay the rent within that period. Another party paid the rent on August 16, 2016. The landlord has a choice at that stage. The landlord could accept the payment and reinstate the tenancy. Alternatively, the landlord could accept the payment "for use and occupation only" and the tenancy would come to an end on the last day of the rental payment period. In this case the landlord accepted the payment "for use and occupation only" and did not reinstate the tenancy.

The Tenant(s) has not made an application to set aside the Notice to End Tenancy and the time to do so has expired. 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 effectively October 31, 2016.

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:

The rent has been paid. However, I determined the landlord is entitled to recover the cost of the filing fee.

I ordered that the Tenant pay to the Landlord the sum of \$100 for the cost of the filing fee.

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 *Manufactured Home Park Tenancy Act*, SBC 2002, c. 77.

Dated: October 19, 2016

Residential Tenancy Branch