



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute codes      OPR MNR MNSD FF

### Introduction

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

- an order of possession for unpaid rent and utilities pursuant to section 55;
- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenant confirmed service of the application for dispute resolution, including the notice of hearing and evidence on file. The landlord acknowledged service of the tenants evidence in response although it was served by e-mail.

### Issues

Is the landlord entitled to an order of possession pursuant to a 10 Day Notice to End Tenancy for unpaid rent (the 10 Day Notice)?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

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

### Background and Evidence

The parties entered into a written tenancy agreement on February 2, 2018 for a tenancy beginning on February 1, 2018. The landlord rented a manufactured home to the tenants at a monthly rent of \$650.00 which included the pad rental. The landlord

collected the rent and paid the pad rental portion to the manufactured home park owners. The landlord rented the pad from the park owners and was subletting it to the tenants. The tenants paid a security deposit of \$325.00 and a pet deposit of \$150.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that on July 17, 2018 a copy of the 10 Day Notice was sent to the tenants by registered mail. The tenants acknowledged receipt of the 10 Day Notice on July 18, 2018.

The landlord testified that the tenants did not pay the outstanding rent amount of \$670.00 which included a \$20.00 late fee as indicated in the 10 Day Notice within five days of service of the Notice. The landlord testified that the tenants have not paid any rent since up to the date of the hearing.

During the hearing the landlord advised that she is also seeking unpaid rent of \$650.00 per month for the months of August and September 2018 for a total monetary claim of \$1970.00. Although the tenants did not have prior notice of the additional monetary claim for unpaid rent, I find that the tenants should reasonably have known that the landlord would suffer this loss if the tenants neither paid rent nor vacated the rental unit. I therefore allowed the landlord's request in the hearing to claim this amount.

The tenants argued that the landlord had no legal standing to act as a landlord and enter into the original tenancy agreement with the tenants. The tenants submit that towards the end of June 2018 they were approached by the previous owner of the manufactured home J.G. J.G. advised the tenants that he was still the owner of the manufactured home and the landlord had no right to rent it out to them. J.G. provided the tenants 30 day verbal notice to vacate the home. Subsequently, on July 16, 2018 the tenants met with J.G. and entered into a new lease with J.G. by which J.G. agreed that they could reside in the home until October 31, 2018 and continue to pay only the pad rent to the park owners. In exchange the tenants agreed the owner J.G. would not be required to perform certain repair work they allege was required in the home. The tenants testified since July 2018 they have continued to pay the pad rental portion of \$210.00 per month directly to the park owners. The tenants testified that they no longer paid the rent to the landlord as they believed the original contract was void and they had a new contract with the owner of the home. The tenants submit that they received the transfer papers of the manufactured home 1 week after entering into the tenancy with the owner J.G. As such, the tenants argue the purchasing landlord should now be bound by the new tenancy agreement which permits them to reside in the home and continue to pay the pad rental portion only.

The landlord testified that the bill of sale for the manufactured home was signed and completed in November 2017 when the landlord purchased the home. The landlord took ownership on this date and at the time of entering into the tenancy agreement they legally owned the home. It wasn't until later that the landlord became aware that the manufactured home had not formally been transferred to the landlord's name with the Manufacture Home Registry due to a missing signature on a document from the previous owner. The signature of the previous owner was subsequently obtained and the manufactured home was officially transferred over to the landlord as of July 16, 2018. The landlord submitted a copy of the transfer verification document.

The landlord acknowledged the pad rent payments made directly to the park by the tenants and agreed to reduce her monetary claim in the amount of \$630.00 which is the pad rental portion for July, August and September 2018.

### Analysis

I dismiss the tenants' argument that the tenancy agreement they had with the landlord was no longer valid. I find the formal transfer of the manufactured home was just a technicality and for all intents and purposes the landlord was the rightful owner of the manufactured home at the time the tenancy agreement was entered into. The tenants were therefore bound by the original tenancy agreement and any subsequent agreement they may have had with the previous owner is invalid.

I am satisfied that the tenants were served with the 10 Day Notice on July 18, 2018, pursuant to sections 88 & 90 of the Act.

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If, as in the present case, the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice, July 28, 2018.

I find that the 10 Day Notice issued on July 17, 2018 complies with the requirements of Section 52 of the Act, accordingly, the landlord is granted an Order of Possession pursuant to section 55 of the Act.

Section 26 of the Act requires 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.

I find that the tenants were obligated to pay monthly rent in the amount of \$650.00 but failed to pay rent for the months of July, August and September 2018. I accept the landlord's claim for outstanding rent plus late fee for July 2018 in the amount of \$1970.00. The amount of \$630.00 in pad rental payments is deducted from this amount as agreed to by the landlord for a net amount outstanding of \$1340.00.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$1440.00.

The landlord continues to hold a security and pet deposit of \$475.00. I allow the landlord to retain the security and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$965.00.

#### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenants fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$965.00. Should the tenants fail to comply with this Order, this 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 *Residential Tenancy Act*.

Dated: September 20, 2018

---

Residential Tenancy Branch