



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, FF

Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent as well as to recover the filing fee for this proceeding.

The Landlord's agent said he served the Tenant with the Application and Notice of Hearing (the "hearing package") on July 23, 2012 by registered mail. Section 83(a) of the Act says that a document delivered by mail is deemed to be received by the recipient 5 days later even if they refuse to pick up the mail. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 82 of the Act and the hearing proceeded in the Tenant's absence.

Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?

Background and Evidence

This tenancy started on October 1, 2007. Rent is \$245.00 per month payable in advance on the 1st calendar day of each month.

The Landlord's agent said the Tenant had rent arrears for April and May 2012 and did not pay pad rent for June 2012 when it was due and as a result, on June 7, 2012, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 7, 2012 by leaving it in the Tenant's mail box. The Landlord's agent said the Tenant has not paid the pad rent arrears and has not paid pad rent for July and August 2012.

Analysis

Section 39(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or apply for dispute resolution. If a Tenant fails to do either of these things, then under section

39(5) of the Act, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the pad site at that time.

I find that the Tenant was served on June 7, 2012 with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities when it was left in his mail box. Under s. 83(d) of the Act, the Tenant is deemed to have received this Notice three days later or on June 10, 2012. Consequently, the Tenant would have had to pay the rent arrears stated on the Notice or apply to dispute that amount no later than June 15, 2012. I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 48(2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant. I also find that the Landlord is entitled to recover rent arrears for April, May, June, July and August 2012 in the amount of \$1,225.00 as well as 5 late fees of \$5.00 each for a total of \$25.00 (pursuant to a term of the tenancy agreement to that effect) as well as the \$50.00 filing fee for this proceeding.

The Parties' tenancy agreement contains a clause requiring the Tenant to pay one month's rent in advance which is to be applied to the last month's rent. I find that the requirement to pre-pay the last month's rent constitutes a security deposit which is prohibited under s. 17 of the Act. As a result, if the Tenant made a pre-payment of rent at the beginning of the tenancy, the Tenant may make an application to recover it.

Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of **\$1,300.00** have been issued to the Landlord. A copy of the Orders must be served on the Tenant; the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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: August 14, 2012.

Residential Tenancy Branch