



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes For the tenant: CNR, PSF
For the landlord: MNR, OPR, FF

Introduction

This hearing dealt with cross applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (the “Act”).

The tenants applied for an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) and an order requiring the landlord to provide services or facilities required by law.

The landlord applied for a monetary order for unpaid rent, for an order of possession for the manufactured home site due to unpaid rent, and to recover the filing fee for the application.

At the outset of the hearing, neither party raised any issues regarding service of the other’s application or the evidence.

The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties were provided the opportunity to present their evidence orally, refer to documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed the oral and written evidence of the parties before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the tenants entitled to an order cancelling the Notice?

Is the landlord entitled to an order of possession for the manufactured home site due to unpaid rent, a monetary order, and to recover the filing fee?

Background and Evidence

The parties agreed that there is no written tenancy agreement; however the parties agreed that the monthly rent for the manufactured home site is \$150 and the monthly storage fee is \$30. The parties also agreed that the tenancy began 14-15 years ago.

Pursuant to the Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice to End Tenancy.

The landlord stated that the tenants were served a 10 Day Notice to End Tenancy for Unpaid Rent on October 11, 2013, by attaching it to the hand railing located at the front door of the tenants' manufactured home, listing unpaid rent of \$1390. The landlord said it was necessary to tape it to the hand railing as the tenants' front door was metal, causing the Notice not to stick. I find the attachment to the hand railing complies with section 81 of the Act for delivery of documents, in that the hand railing was a conspicuous place at the manufactured home site.

The landlord submitted that the tenants have not made a rent payment since issuance of the Notice, and owe the amount of \$1440 in total unpaid rent since April 2013. I note that \$240 of this amount is unpaid storage.

In response, the tenant admitted they had not paid rent "in a while."

Analysis

Landlord's Application:

Under section 20 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

Where a tenant fails to pay rent when due, the landlord may serve the tenant with a 10 Day Notice for Unpaid Rent. Upon receipt of the 10 Day Notice, the tenant must pay the outstanding rent or dispute the Notice within five days. In this case, I find that the tenants disputed the Notice within five days. When a Notice is disputed, the tenants must be able to demonstrate that they did not owe the landlord rent or had some other legal right to withhold rent.

In the case before me, I am satisfied that the tenants owed the landlord rent when the Notice was issued and that they did not pay all or any of the rent owed to the landlord within five days of receiving the Notice.

Therefore, I find the tenancy has ended for the tenants' failure to pay rent and the landlord is entitled to regain possession of the manufactured home site.

I find that the landlord is entitled to and I therefore grant an order of possession for the manufactured home site effective 30 days after service upon the tenants, pursuant to the landlord's request.

I find the landlord submitted sufficient evidence that the tenants owe the amount of \$1200 for unpaid rent from April through November. I also find the tenants owed the amount of \$240 in storage fees.

I therefore find that the landlord is entitled to a monetary award of \$1490, comprised of unpaid rent of \$1200 from April through November, unpaid storage of \$240 from April through November, and recovery of the filing fee of \$50, which I have granted due to the landlord's successful application.

Tenants' application:

Due to the above, the tenants' application for dispute resolution seeking a cancellation of the Notice is dismissed without leave to reapply as I find the Notice to End Tenancy issued is valid and enforceable.

As I have granted the landlord's application for vacant possession of the manufactured home site, I also dismiss the tenants' request for an order requiring the landlord to provide services or facilities required by law.

Conclusion

I grant the landlord a final, legally binding order of possession for the manufactured home site, which is enclosed with the landlord's Decision. Should the tenants fail to vacate the manufactured home site with their manufactured home pursuant to the terms of the order after it has been served upon them, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

I grant the landlord a final, legally binding monetary order pursuant to section 60 of the Act for the amount of \$1490, which I have enclosed with the landlord's Decision.

Should the tenants fail to pay the landlord this amount without delay after the order has been served upon them, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court. The tenants are advised that costs of such enforcement are recoverable from the tenants.

The tenants' application is dismissed, without leave to reapply.

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: November 29, 2013

Residential Tenancy Branch

