



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

### **Dispute Codes:**

OPR, MNR, MNDC, FF

### **Introduction**

This hearing was convened in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent, a monetary Order for money owed or compensation for damage or loss, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

At the hearing the Agent for the Landlord applied to amend the Landlord's Application for Dispute Resolution to include a claim for unpaid rent for April of 2011. The Tenant did not object to the amendment and the Landlord's Application for Dispute Resolution was amended accordingly.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. He stated that he meant to file an application to set aside the Notice to End Tenancy.

Both parties were represented at the hearing. The male Tenant stated that he was representing the female Tenant at the hearing. The parties were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch. The Tenant acknowledged receipt of the Landlord's documents and they were accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch. The Landlord acknowledged receipt of the Tenant's documents and they were accepted as evidence for these proceedings.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to an Order of Possession for unpaid rent; whether the Landlord is entitled to a monetary Order for unpaid rent; whether the Landlord is entitled to a monetary Order for an NSF fee and late fees; whether the Tenant is entitled to compensation for bringing hydro to the site; and whether either party is entitled to recover the filing fee for filing an Application for Dispute Resolution, pursuant to sections 48, 60, and 65 of the *Manufactured Home Park Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord and the Tenant agree that this tenancy began on October 01, 2007, and that there is a written tenancy agreement for the manufactured home site.

The Agent for the Landlord and the Tenant agree that the rent for this site was \$600.00 at the start of the tenancy, that it has increased on an annual basis, that it increased to \$665.86 on November 01, 2010, and that rent is due on the first day of each month. The Tenant stated that he originally believed that the Landlord did not have the right to increase the rent until the end of the fixed term of this tenancy but, upon reviewing the tenancy agreement, he now understands that the Landlord did have the right to increase the rent annually. The Tenant does not dispute that the rent has been increased in accordance with the legislation, although he believes the site is not worth \$665.86 per month.

The Agent for the Landlord and the Tenant agree that the Tenants tendered a cheque for the rent for January of 2011, that the cheque was returned due to insufficient funds, and that the Tenants have not yet paid any rent for January, February, March, and April of 2011. The Tenant stated that he stopped paying his rent because he believed he had been paying too much rent for the rental site.

The Agent for the Landlord and the Tenant agree that the Landlord mailed a Ten Day Notice to End Tenancy for Unpaid Rent to the Tenants on, or about, February 03, 2011. The Notice had a declared effective date of February 14, 2011 and it declared that the Tenants owed \$1,381.72 in rent that was due on February 01, 2011.

The Landlord is also seeking compensation, in the amount of \$75.00, as the Tenants did not pay rent when it was due on January 01, 2011, February 01, 2011, and March 01, 2011. In the tenancy agreement, which was submitted in evidence, the Tenants agreed to pay a fee of \$25.00 whenever they are late paying rent.

The Landlord is also seeking compensation, in the amount of \$25.00, as the Tenants' rent cheque for January of 2011 was returned due to insufficient funds. In the tenancy

agreement, which was submitted in evidence, the Tenants agreed to pay a fee of \$25.00 whenever they tender an NSF cheque.

The Tenant is seeking compensation of \$300.00 for money he paid to have hydro service established at the site. The Landlord submitted an addendum to the tenancy agreement which specifies that "if the existing electrical service (including electrical meter) to the Site does not function properly or is not adequate for the Tenants' needs, all costs associated with any repair, upgrade or modification are for the account of the Tenants". The addendum stipulates that "costs to hook up to the electrical service for the Site are for the account of the Tenant". The Tenant stated that he was not aware of this clause in the addendum when he filed his Application for Dispute Resolution.

The Tenant is seeking compensation of \$1,150.00 for the cost of establishing a fence around the perimeter of the rental site. He stated that the Landlord did not direct him to erect a fence nor did the Landlord indicate he would pay to erect a fence. He stated that he feels he is entitled to be reimbursed for erecting the fence as he has learned, since erecting the fence, that the Landlord has paid to have fences erected on other sites.

### Analysis

Based on the undisputed evidence presented at the hearing, I find that the Tenants entered into a tenancy agreement that initially required the Tenant to pay monthly rent of \$600.00 on the first day of each month. Based on the undisputed evidence presented at the hearing, I find that the rent has been increased on an annual basis and that the Tenants are currently required to pay monthly rent of \$665.86.

Section 26(1) of the *Act* requires tenants to pay rent to their landlord. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenants have not paid rent for any portion of the rent for January, February, March, and April of 2011. As the Tenants are required to pay rent when it is due and while they are occupying the site, I find that the Tenants must pay \$2,663.44 in outstanding rent to the Landlord for the period between January 01, 2011 and April 30, 2011.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 46 of the *Act*. Based on the undisputed evidence presented at the hearing, I find that a Notice to End Tenancy was mailed to the Tenants on February 03, 2011, which directed the Tenants to vacate the rental unit by February 14, 2011, pursuant to section 46 of the *Act*.

Section 90 of the *Act* stipulates that a document that is mailed is deemed to be received on the fifth day after it is mailed. I therefore find that the Tenants received the Notice to End Tenancy on February 08, 2011.

Section 46(1) of the *Act* stipulates that a 10 Day Notice to End Tenancy is effective ten days after the date that the tenant receives the Notice. As the Tenants are deemed to have received this Notice on February 08, 2011, I find that the earliest effective date of the Notice was February 18, 2011.

Section 53 of the *Act* stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was February 18, 2011.

I find that the Tenants were obligated to pay the rent that they agreed to pay and that was increased according to legislation, even if they did not believe the site was worth the amount of rent being charged. As the Tenants did not pay the rent that was due and they were served with proper notice to end this tenancy, I find that the Landlord has the right to end this tenancy pursuant to section 46 of the *Act*. On this basis I will grant the landlord an Order of Possession that is effective at 1:00 p.m. on April 30, 2011.

As the Tenants tendered a cheque for rent for January of 2011 and it was not honoured by their financial institution and their tenancy agreement requires them to pay an NSF fee of \$25.00 for NSF cheques, I find that the Landlord is entitled to an NSF fee of \$25.00.

As the Tenants did not pay rent when it was due in January, February, and March of 2011 and their tenancy agreement requires them to pay a late fee of \$25.00 when rent is not paid when it is due, I find that the Landlord is entitled to late fees of \$75.00. The Landlord did not apply for a late fee for April of 2011.

Based on the addendum to the tenancy agreement that was submitted in evidence, I find that it was made clear to the Tenants that they must pay for the cost of bringing hydro to their home. I therefore find that the Landlord is not obligated to pay for the costs of bringing hydro to the site and I dismiss the Tenants' application for compensation, in the amount of \$300.00.

As the Tenant has submitted no evidence to show that the Tenant was required to erect a fence, that the Landlord agree to provide a fence as a term of this tenancy, or that the Landlord agree to pay for a fence to be erected on the Tenants' site, I find that I have no authority to order the Landlord to pay for a fence that the Tenants elected to erect. On this basis, I dismiss the Tenants' application for compensation for erecting a fence.

I find that the Landlord's application has merit and that the Landlord is entitled to recover the filing fee from the Tenants for the cost of their Application for Dispute Resolution.

I find that the Tenants' application has been without merit and I dismiss their application to recover the filing fee from the Landlord for the cost of their Application for Dispute Resolution.

Conclusion

I hereby grant the Landlord an Order of Possession that is effective at 1:00 p.m. on April 30, 2011. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, and enforced as an Order of that Court.

I find that the Landlord has established a monetary claim, in the amount of \$2,813.44, which is comprised of \$2,663.44 in unpaid rent, \$75.00 in late fees, \$25.00 in NSF fees, and \$50.00 in compensation for the filing fee paid by the Landlord for this Application for Dispute Resolution. Based on these determinations I grant the Landlord a monetary Order for the amount of \$2,813.44. In the event that the Tenants do not comply with this Order, it may be served on the Tenants, filed with the Province of British Columbia Small Claims 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: April 08, 2011.

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Residential Tenancy Branch