



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

For the tenant – DRI, CNC, OLC

For the landlord – OPE, OPR, OPC, MND, MNR, MNDC, FF, O

### Introduction

This decision was scheduled to deal with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were due to be heard together. The hearing went ahead as scheduled and the agent for the landlord dialed into the conference call on behalf of the landlord. The phone line remained open for the length of the hearing, however the tenant did not dial into the call during this time. Based on this I find that the tenant has failed to present the merits of his application and his application is dismissed without leave to reapply.

The landlord seeks an Order of Possession for unpaid rent, a Monetary Order to recover unpaid rent and utilities and for money owed or compensation for damage or loss under the *Manufactured Home Park Tenancy Act (Act)*, regulation or tenancy agreement and to recover their filing fee. The landlords' agent withdrew the remainder of their claim at the outset of the hearing.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Act*.

### Issue(s) to be Decided

- Is the landlord entitled to an Order of Possession for unpaid rent and utilities?

- Is the landlord entitled to a Monetary Order to recover unpaid rent and utilities?
- Is the landlord entitled to a Monetary Order in compensation for an unreturned sewage pump?

### Background and Evidence

The landlords' agent testifies that this tenant originally lived on the site with his mother who was the site manager. After his mother passed away he became the site manager and he was later fired by the landlord but was offered a tenancy at the normal rate for a site the size he occupied. At this time his tenancy started in approximately October, 2008. The rent was set at \$366.00. At a previous hearing it was ordered that the tenant must pay a monthly rent from September 01, 2010 of \$379.00 after a rent increase was approved. At that hearing a ruling was also made in favour of the landlord that sewage charges were also to be paid by the tenant.

The landlords' agent testifies that the tenant owed \$30.00 in unpaid rent for 2010 and from January 01, 2011 the tenant failed to pay the rent increase as Ordered at the previous hearing and owes \$165.00 for January, 2011, and \$13.00 for February, March, April, May and June, 2011 to a total sum of \$230.00. The tenant also failed to pay his sewage charges as Ordered at the previous hearing and in 2010 the sewage charge was \$275.72 for the year. The tenant paid \$50.00 which leaves an outstanding balance of \$225.72. In 2011 the landlord decided to charge the tenants every three months for sewage and the tenant has failed to pay the first quarter of the year to the sum of \$68.93. The landlords' agent states they are waiting for the bill for the second quarter of 2011.

The landlords' agent testifies that the tenant was served a 10 Day Notice for unpaid rent on June 03, 2011. The tenant had five days to pay the outstanding rent or dispute the Notice or the tenancy would end on June 15, 2011. The tenant did not pay the rent or utilities and did not apply to dispute this Notice. Since that time the tenant has also failed to pay rent for July, 2011 and the landlord seeks to amend her application to include this rent as the tenant continues to reside at the park.

The landlords' agent testifies that the tenant has failed to return a sewage pump he has in his possession which belongs to the landlord. She states this pump was reconditioned and is kept as a spare pump in the event the other pump malfunctions. The landlords' agent states this pump is vital for the landlord to have in their possession to ensure the sewage can be pumped away from the park if the other pump fails. The landlords' agent has provided a copy of the original receipt for the new pump which is in position at this time and states if the tenant refuses to return the other pump then they seek compensation from the tenant to the sum of \$1,160.00 to purchase another pump to have as a spare. The landlord agrees the tenant should be given a final opportunity to return the pump before compensation is sought.

The landlord seeks an Order of Possession to take effect at the end of July, 2011 and seek to recover the \$50.00 filing fee paid for this application.

### Analysis

The tenant did not appear at the hearing to dispute the landlords' claims, despite having been given a Notice of the hearing and despite having filed his own application to cancel the One Month Notice and other issues. Therefore, in the absence of any evidence from the tenant, I have carefully considered the landlords documentary evidence and affirmed testimony before me.

Section 20 of the Act states: *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 have no evidence before me that the tenant has a right under the *Act* to deduct any amount of rent, rather at a previous hearing the tenant was ordered to pay the new amount of rent after a rent increase was imposed. In light of this I find the landlord is entitled to recover unpaid rent from 2010 of \$30.00 and from 2011 of \$230.00. I also allow the landlord

to amend their application to include unpaid rent for July, 2011 as the tenant continues to live in the Manufactured Home Park and would be aware that rent is due on the first day of each month for his site. Consequently, the landlord is entitled to recover unpaid rent to the total sum of **\$639.00** pursuant to s.60 of the *Act*.

I further find at a previous hearing the tenant was ordered to pay sewage fees and owes a sum from 2010 of \$225.72 and for the first quarter of the 2011 he owes the sum of \$68.93. Consequently, the landlord is entitled to recover the sum of **\$294.65** from the tenant pursuant to s. 60 of the *Act*.

I accept that the tenant was served the 10 Day Notice to End Tenancy for unpaid rent, pursuant to section 81 of the *Act*. The Notice states that the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The tenant did not pay the outstanding rent within five days nor apply to dispute the Notice to End Tenancy within five days.

Based on the foregoing, I find that the tenant is conclusively presumed, under section 39 (5) (a) of the *Act*, to have accepted that the tenancy ended on the effective date of the Notice and I grant the landlord an order of possession pursuant to s. 48(2)(b) of the *Act*.

With regard to the landlords claim for compensation for the sewage pump. The landlord has agreed that the tenant should be given a final opportunity to return the sewage pump.

Therefore **I HEREBY ORDER the tenant** to return the sewage pump to the landlord within **seven (7) days** of receiving the Order. The landlord is entitled to have the pump inspected to ensure it is in the same condition it was in after it was reconditioned. If the tenant fails to return the pump in a suitable condition for use within seven days the landlord is at liberty to file a new application to recover the cost of replacing the pump.

As the landlord has been successful with their claim I find the landlord is entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 65(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Unpaid rent	\$639.00
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Unpaid utilities	\$294.65
<b>Subtotal</b>	<b>\$933.65</b>
Plus filing fee	\$50.00
<b>Total amount due to the landlord</b>	<b>\$983.65</b>

Conclusion

The Tenant's application is dismissed in its entirety without leave to reapply. The 10 Day Notice to End Tenancy will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **July 31, 2011**. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$983.65**. The order must be served on the Respondent and is enforceable through the Provincial Court as an order of that Court.

I HEREBY ORDER the tenant to return the sewage pump to the landlord within seven (7) days of receiving the Order.

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: July 07, 2011.

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Residential Tenancy Branch