



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes:

OPR, MNR

### Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for an Order of Possession for Unpaid Rent and a monetary Order for unpaid rent.

The Agent for the Landlord stated that copies of the Application for Dispute Resolution and Notice of Hearing were posted on the door of the unit on May 20, 2012.

### Preliminary Matter

The purpose of serving the Application for Dispute Resolution and the Notice of Hearing to tenants is to notify them that a dispute resolution proceeding has been initiated and to give them the opportunity to respond to the claims being made by the landlord. When a landlord files an Application for Dispute Resolution in which the landlord has applied for a monetary Order, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 82(1) of the *Manufactured Home Park Tenancy Act (Act)*.

Section 82(1) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the person;
- (c) by sending a copy by registered mail to the address at which the person resides;
- (d) by sending a copy by registered mail to a forwarding address provided by the tenant;  
or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

As there is no evidence that the Tenant was served with the Application for Dispute Resolution or Notice of Hearing in accordance with section 82(1) of the *Act*, the Landlord was advised that the Tenant had not been served with the Application for Dispute Resolution and the Notice of Hearing for the purposes of proceeding with the Landlord's application for a monetary Order. The Landlord was provided with the opportunity to either withdraw the Application for Dispute Resolution in its entirety or to

withdraw the application for a monetary Order and to proceed with the application for an Order of Possession. The Agent for the Landlord elected to withdraw the application for a monetary Order.

When a landlord files an Application for Dispute Resolution in which the landlord has applied for an Order of Possession, the landlord has the burden of proving that the tenant was served with the Application for Dispute Resolution in compliance with section 82(2) of the *Act*.

Section 82(2) of the *Act* stipulates, in part, that a landlord must serve a tenant with an Application for Dispute Resolution in one of the following ways:

- (a) by leaving a copy with the tenant;
- (c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- (d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides; or
- (e) as ordered by the director under section 71 (1) [*director's orders: delivery and service of documents*].

Based on the testimony of the Agent for the Landlord and in the absence of evidence to the contrary, I find that the Tenant was served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 82(2)(d) of the *Act*. As the Tenant has been properly served with the Application for Dispute Resolution and the Notice of Hearing pursuant to section 82(2) of the *Act*, I find it is appropriate to consider the Landlord's application for an Order of Possession.

#### Issue(s) to be Decided

The issue to be decided is whether the Landlord is entitled to an Order of Possession for unpaid rent, pursuant to section 48 of the *Act*.

#### Background and Evidence

The Agent for the Landlord stated that she is not certain when this tenancy began but it was sometime prior to January 01, 2010; that the Landlord and the Tenant have a verbal tenancy agreement; and that the Tenant verbally agreed to pay monthly rent of \$350.00 by the first day of each month.

The Agent for the Landlord stated that the Tenant has not paid any rent for the past 14 months, and that the Tenant currently owes \$4,900.00 in rent.

The Agent for the Landlord stated that on May 02, 2012 a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of May 16, 2012, was

sent to the Tenant at the unit, via registered mail. The Landlord submitted a Canada Post receipt that corroborates this testimony.

### Analysis

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant entered into a tenancy agreement with the Landlord that requires the Tenant to pay monthly rent of \$350.00 by the first day of each month.

Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that the Tenant has not paid rent for the past fourteen months.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 39 of the *Act*. Based on the evidence provided by the Landlord and in the absence of evidence to the contrary, I find that on May 02, 2012 a Notice to End Tenancy was mailed to the Tenant, which directed the Tenant to vacate the rental unit by May 16, 2012, pursuant to section 39 of the *Act*.

Section 83 of the *Act* stipulates that a document that is served by mail is deemed to be received on the fifth day after it is mailed. I therefore find that the Tenant received the Notice to End Tenancy on May 07, 2012.

Section 39(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 Tenant is deemed to have received this Notice on May 07, 2012, I find that the earliest effective date of the Notice was May 17, 2012.

Section 46 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 May 17, 2012.

Section 39 of the *Act* stipulates, in part, that a tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the Notice to End Tenancy if the tenant does not either pay the outstanding rent or file an Application for Dispute Resolution to dispute the Notice within five days of receiving the Notice to End Tenancy. In the circumstances before me I have no evidence that the Tenant exercised either of these rights and, pursuant to section 39(5) of the *Act*, I find that the Tenant accepted that the tenancy has ended. On this basis I find that the Landlord is entitled to an Order of Possession.

### Conclusion

I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order may be served on the Tenant, filed with the Supreme Court of British Columbia, 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: June 12, 2012.

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Residential Tenancy Branch