



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's application for dispute resolution under the *Manufactured Home Park Tenancy Act (the "Act")* seeking an order of possession for the manufactured home pad site, a monetary order for unpaid pad rent and for recovery of the filing fee.

The landlord appeared; the tenant did not appear.

The landlord testified that he served the tenant with the Application for Dispute Resolution and Notice of Hearing by leaving it with the tenant on September 21, 2012.

I find the tenant was served in a manner complying with section 82 of the Act and the hearing proceeded in the tenant's absence.

The landlord was provided the opportunity to present his evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Issue(s) to be Decided

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

### Background and Evidence

The landlord said that this tenancy began in July 2009, monthly pad rent began at \$575.00 and increased every year to the current monthly rent of \$660.39.

The landlord said that on September 4, 2012, he served the tenant a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice"), by leaving it with the tenant, listing unpaid pad rent of \$9400.00 as of September 4, 2012. That amount was stricken on the Notice and the amount of \$9152.63 was then listed.

The effective vacancy date listed on the Notice was September 14, 2012.

The Notice informed the tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explained the tenant had five days to dispute the Notice.

I have no evidence before me that the tenant applied to dispute the Notice.

The landlord stated that the tenant has not made a payment of rent since issuance of the Notice.

The landlord's relevant evidence included the Notice and a handwritten form of accounting showing monthly payments owed and monthly payments made, since June 2009. The accounting also showed that rent was increased in January of 2010, that the landlord also charged a late fee of \$20.00 per month in 2009, that the rent was increased yearly thereafter, and that the total amount claimed including a filing fee of \$50.00 for a previous dispute resolution hearing.

#### Analysis and Conclusion

Based on the oral and written evidence and on a balance of probabilities, I find as follows:

The tenant has not paid the outstanding rent listed on the Notice and did not apply to dispute the Notice and is therefore conclusively presumed under section 39(5) of the Act to have accepted that the tenancy ended on the effective vacancy date of the Notice.

I therefore find that the landlord is entitled to an order of possession for the manufactured home pad site effective two days after service of the order upon the tenant.

I grant the landlord a final, legally binding order of possession, which is enclosed with the landlord's Decision. Should the tenant fail to vacate the manufactured home pad site pursuant to the terms of the order, this order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court.

As to the landlord's request for a monetary order, I find the landlord submitted insufficient evidence that he is entitled to such an order. With the evidence submitted, I cannot conclude that the monthly pad rent was increased in a manner complying with the Act. For instance, section 35 of the Act states that a landlord must not impose a rent increase for at least 12 months, thereafter may only increase the rent in accordance with the Act, on the proper form, and the increase may not exceed the amount allowed under the regulations. From the evidence submitted, it appears that the landlord imposed a rent increase less than 12 months after the tenancy began, making all other increases invalid.

Additionally, a search of the records shows that the landlord has previously been awarded a monetary order for unpaid rent through February 3, 2011, and the request for another monetary order covering that time period is considered res judicata.

As the landlord failed to submit his evidence that the rent increase was on the proper form and in the allowed amount, and included amounts not considered unpaid rent, such as late fees and filing fees for previous dispute resolution, I find the landlord submitted insufficient evidence to prove his monetary claim for unpaid rent.

I therefore dismiss the landlord's request for a monetary order for unpaid rent, without leave to reapply.

Due to his successful application for an order of possession, I grant the landlord a monetary order for \$50.00 for recovery of the filing fee.

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 (the "Act")* and is being mailed to both the applicant and the respondent.

Dated: October 24, 2012.

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Residential Tenancy Branch