



# 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.

Both parties were represented at the hearing. They 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. Neither party served evidence in regards to this matter.

At the outset of the hearing the Tenant requested an adjournment, as he has sold the manufactured home that is located in this manufactured home park and the new owner was unable to attend the hearing. The Tenant stated that he does not know what evidence the new owner would be able to present at the hearing. As the Tenant was unable to state what relevant evidence the new owner might present at these proceedings, I denied the application for an adjournment. The Tenant was advised that I would reconsider this decision during the hearing if it became apparent that the new owner might have information that is relevant to the matters in dispute, however at no time during these proceedings did I determine an adjournment would be appropriate.

### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession for unpaid rent and a monetary Order for unpaid rent, pursuant to sections 48 and 60 of the *Manufactured Home Park Tenancy Act (Act)*?

### Background and Evidence

The Landlord was uncertain when this tenancy began but the Tenant stated that he entered into a tenancy agreement with the Landlord on March 01, 2012. The Landlord stated that the tenancy agreement requires the Tenant to pay monthly rent of \$250.00 by the first day of each month and that rent was increased to \$255.00 on July 01, 2012. The Tenant stated that the tenancy agreement required him to pay monthly rent of \$250.00 by the first day of each month and that rent has never been increased.

The Tenant stated that he has never lived in the rental unit and that he sold it on July 12, 2012. The Landlord and the Tenant agree that the Tenant informed the Landlord the rental unit had been sold; that the Tenant never provided the Landlord with written notice of his intent to end his tenancy; and that the Tenant never asked the Landlord for permission to assign the tenancy agreement to the new owner.

The Tenant stated that when he informed the former agent for the Landlord that he had sold the property she told him "everything would be fine" providing the new owner came to speak with her. He stated that the former agent for the Landlord subsequently told him that the new owner had not been approved for tenancy; that the former agent for the Landlord told him that the new owner could not live in the manufactured home; that the Tenant told the new owner that he could not live in the rental unit; that the Landlord would not accept rent from the new owner; and that the new owner moved out of the rental unit sometime in August of 2012.

The female Landlord stated that the new owner did submit an application for a tenancy agreement on August 01, 2012; that the Landlord elected not to enter into a tenancy agreement with the new owner due to a poor credit rating and an unacceptable background check; that the Landlord refused to accept rent from the new owner; and that the new owner moved out of the manufactured home on August 13, 2012 or August 14, 2012.

The female Landlord stated that rent has not been paid for August, September, October, or November of 2012. The Tenant stated that he has not paid rent for these months and he believes the new owner offered to pay rent but that his offer was refused.

The female Landlord stated that she posted a Ten Day Notice to End Tenancy for Unpaid Rent, which had a declared effective date of September 14, 2012, on the manufactured home on two separate occasions in September. She stated that the first Notice she posted was not removed so she removed that one and placed a new Notice on the door on September 14, 2012, which was removed by an unknown person on an unknown date. The Tenant stated that he did not receive either Notice as he did not return to the rental unit in September of 2012.

### Analysis

Based on the undisputed evidence presented at the hearing, I find that the Landlord and the Tenant entered into a tenancy agreement that required the Tenant to pay monthly rent of \$250.00 by the first day of each month. As the Tenant does not agree that rent was increased and the Landlord submitted no documentation to show the rent was increased to \$255.00, I find that the Landlord has failed to establish that the Tenant is required to pay \$255.00 in rent.

Section 37(1)(a) of the *Act* stipulates that a tenancy ends if the tenant or landlord gives notice to end the tenancy in accordance with section 38, 39, 40, 41, 42, or 43 of the *Act*. The evidence shows that neither party gave written notice to end this tenancy in accordance with these sections and I find that the tenancy did not end pursuant to section 37(1)(a) of the *Act*.

Section 37(1)(b) of the *Act* stipulates that a tenancy ends if the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the site on the date specified as the end of the tenancy. As there is no evidence that this was a fixed term tenancy, I find that the tenancy did not end pursuant to section 37(1)(b) of the *Act*.

Section 37(1)(c) of the *Act* stipulates that a tenancy ends if the landlord and the tenant agree in writing to end the tenancy. As there is no evidence that the parties agreed in writing to end the tenancy, I find that the tenancy did not end pursuant to section 37(1)(c) of the *Act*.

Section 37(1)(d) of the *Act* stipulates that a tenancy ends if the tenant vacates or abandons the rental unit. Although the Tenant did inform the Landlord that the manufactured home had been sold, I find that the Landlord could not reasonably conclude that the home had been abandoned on the site, given that a new owner had been identified. I therefore find that the tenancy did not end pursuant to section 37(1)(c) of the *Act*.

Section 37(1)(e) of the *Act* stipulates that a tenancy ends if the tenancy agreement is frustrated. As there is no evidence that this tenancy agreement was frustrated, I find that the tenancy did not end pursuant to section 37(1)(e) of the *Act*.

Section 37(1)(f) of the *Act* stipulates that a tenancy ends if the director orders that it has ended. As there is no evidence that the director ordered an end to this tenancy, I find that the tenancy did not end pursuant to section 37(1)(f) of the *Act*.

As this tenancy has not been ended in accordance with section 37 of the *Act*, I find that both parties are remain obligated to comply with the terms of their tenancy agreement. As the Tenant is required to pay rent by the first day of each month, I find that the Tenant must pay the Landlord for unpaid rent from August, September, October, and November of 2012, in the amount of \$1,000.00.

If rent is not paid when it is due, a tenancy may be ended pursuant to section 39 of the *Act*. In the absence of evidence to the contrary, I accept that the Landlord posted a Ten Day Notice to End Tenancy, served pursuant to section 39 of the *Act*, on the door in September. I find, however, that the Landlord has submitted insufficient evidence to show that the Tenant actually received this Notice to End Tenancy. In reaching this conclusion I was heavily influenced by the testimony of the Tenant, who stated that he did not go to the site in September and he did not locate the Notice.

Section 39(4) of the *Act* stipulates that Notice to End Tenancy for Unpaid Rent has no effect if a tenant pays the overdue rent within five days of receiving the Notice. As there is insufficient evidence to conclude that the Tenant received the Notice to End Tenancy

that was posted at the manufactured home and the Landlord did not serve the Tenant with a copy of the Notice as evidence for these proceedings, I find that the Notice to End Tenancy is not yet enforceable. I therefore dismiss the Landlord's application for an Order of Possession. The Landlord retains the right to serve another Notice to End Tenancy for Unpaid Rent if the Tenant does not pay the rent that is due.

Section 28 of the *Act* permits a tenant to assign a tenancy agreement if the tenant has obtained prior written consent from the landlord; the tenant has an order from the director authorizing the assignment; or the tenancy agreement authorizes the assignment. No evidence was presented to establish that this tenancy agreement has been assigned in accordance with section 28 of the *Act*.

### Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,000.00, and I grant a monetary Order in that amount. In the event that the Tenant does not comply with this Order, it may be served on the Tenant, 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: November 05, 2012.

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Residential Tenancy Branch