



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR and FF

### Introduction

This application was brought by the landlord on November 13, 2012 seeking an Order of Possession for the manufactured home park site pursuant to a 10-day Notice to End Tenancy for unpaid rent served by posting on the tenant's door on September 13, 2012. The landlord also sought a Monetary Order for unpaid rent and recovery of the filing fee for this proceeding. .

### Issue(s) to be Decided

This application now requires a decision on whether the landlord is entitled to an Order of Possession and monetary award as requested.

### Background and Evidence

This tenancy began on October 1, 2007 according to evidence given by the tenant. Pad rent is \$300 per month.

At the commencement of the hearing, the landlord's agent gave evidence that the Notice to End Tenancy of September 13, 2012 had been served when the tenant had failed to pay the rent for July, August and September of 2012. In the interim, the tenant has not paid rent for October or November of 2012. The rent was paid for December 2012 and the landlord issued a receipt with the notation, "for use and occupancy only," indicating that acceptance of the December rent did not reinstate the tenancy.

The tenant agreed that she had not paid the rent for July to November 2012 as claimed by the landlord and explained that she had withheld it in protest over deficiencies in the infrastructure of the manufactured home park and the landlord's failure to provide her with a new written rental agreement.

The landlord acknowledged that there had been problems with the infrastructure at the park but that the landlord had made substantial progress in making improvements.

He stated that he had met with the tenant in mid-September in an effort to come to an agreement to compensate the tenant, including an offer to waive rent for July and August 2012, and to give the tenancy a fresh start.

However, he said they had been unable to reach a compromise resulting in the present application to uphold the Notice to End Tenancy. I must note that the tenant's conduct during the hearing lent credence to the landlord's claim of difficulty in negotiating with the tenant as I had to mute her line in order to give the landlord an opportunity to give evidence and respond.

The tenant stated that she had witnesses to testify to the issues that led to her not paying rent, but none could give evidence that she had actually paid the rent in question which is the only issue before me. As the evidence would have been irrelevant to the present application, I declined to hear it.

### Analysis

Section 20 of the *Act* provides that: "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." In other words, while there are remedies available under the Act for aggrieved tenants, withholding of rent is not among them.

Section 39 of the *Act* provides that a landlord may issue a Notice to End Tenancy for unpaid rent on a day after the rent is due. The tenant may cancel the notice by paying the overdue rent or make application to dispute the notice within five days of receiving it.

In this instance, I find that the tenant did not pay the rent within five days of receiving the notice and did not make application to dispute it.

Therefore, under section 39(5) of the *Act*, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy which was September 24, 2012.

Accordingly, I find that the landlord is entitled to an Order of Possession to take effect at 1 p.m. on January 31, 2013 as requested.

I further find that the landlord is entitled to a Monetary Order for the unpaid pad rent under section 60 of the *Act* and recovery of the filing fee for this proceeding under section 65 of the *Act*, as follows:

|                  |                   |
|------------------|-------------------|
| Unpaid rent for: |                   |
| August 2012      | 300.00            |
| September 2012   | 300.00            |
| October 2012     | 300.00            |
| November 2012    | 300.00            |
| Filing fee       | <u>50.00</u>      |
| <b>TOTAL</b>     | <b>\$1,550.00</b> |

### Conclusion

The landlord's copy of this decision is accompanied by an Order of Possession, enforceable through the Supreme Court of British Columbia, to take effect at 1 p.m. on January 31, 2013 for service on the tenants.

The landlord's copy of this decision is also accompanied by a Monetary Order for **\$1,550.00**, enforceable through the Provincial Court of British Columbia, for service on the tenant.

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*.

Dated: December 13, 2012.

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Residential Tenancy Branch