



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ALPINE VALLEY ESTATES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with a landlord's application for an Order of Possession for unpaid rent and a Monetary Order for unpaid rent and NSF fees. The tenants did not appear at the hearing. The landlord was represented by two agents. The landlord testified that the hearing documents were sent by registered mail to each tenant on May 10, 2013. The landlord provided two registered mail tracking numbers as proof of service. A search of the tracking numbers showed that the package sent to the male tenant was successfully delivered on May 15, 2013 and the package sent to the female tenant was returned as unclaimed. I was satisfied that both tenants were served with the hearing documents in a manner that complies with the Act and I continued to hear from the landlord's agents without the tenants present.

### Issue(s) to be Decided

1. Is the landlord entitled to an Order of Possession for unpaid rent?
2. Is the landlord entitled to monetary compensation in the amount claimed for unpaid rent and NSF fees?

### Background and Evidence

This periodic tenancy commenced on August 27, 2011. The tenants are required to pay rent of \$285.00 on the 1<sup>st</sup> day of every month.

The tenancy agreement contains a provision for a service charge of \$40.00 for returned cheques. Up until June 2012 NSF fees were not charged by the landlord. Starting in June 2013 the landlord started charging tenants \$30.00 for NSF cheques.

On February 4, 2013 the landlord participated in a dispute resolution proceeding and was provided a Monetary Order by the Arbitrator in the amount of \$1,883.00 which included unpaid rent up until the month of January 2013.

Subsequent to the previous dispute resolution hearing, the tenants' rent cheque for February 2013 was returned for insufficient funds. For the months of March 2013 and April 2013 the landlord attended the tenants' financial institution twice per month in an attempt to cash their rent cheques. Every time the landlord was informed by the financial institution that the rent cheques would not be honoured.

On April 18, 2013 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent and personally delivered it to the male tenant, at the manufactured home, on April 18, 2013. The 10 Day Notice has a stated effective date of April 28, 2013 and indicates rent of \$2,373.00 is outstanding. The landlord submitted that this amount was calculated as unpaid rent up to and including the month of March 2013, including amounts reflected in the Monetary Order issued February 4, 2013.

The tenants did not file to dispute the 10 Day Notice issued April 18, 2013 and have not paid any rent since. On May 5, 2013 the landlord finally deposited the rent cheques for the months of March 2013, April and May 2013. The landlord issued a receipt for "use and occupancy only" in doing so; however, all of the cheques were subsequently returned for insufficient funds.

By way of this Application, the landlord requested an Order of possession and a Monetary Order for unpaid rent in the amount of \$2,433.00. This amount is comprised of unpaid rent for months up to March 2013, including the months already included in the previous Monetary Order issued, plus two NSF service charges. The landlord requested the application be amended to exclude amounts included in the previous Monetary Order and include unpaid and/or loss of rent for April 2013, May 2013 and June 2013. As the request for amendment reduced the landlord's total claim and the tenants continue to occupy the rental site I found the request non-prejudicial to the tenants and agreed to consider the request.

Documentary evidence provided for this proceeding included copies of: the tenancy agreement; the 10 Day Notice dated April 18, 2013; and, the landlord's calculation of amounts owed as of May 7, 2013.

### Analysis

When a tenant does not pay rent when due to the landlord, in accordance with their tenancy agreement and the Act, the landlord is at liberty to serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent.

When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. If a tenant does not pay the outstanding rent or dispute the Notice within five days then, pursuant to section 39 of the Act, the tenant is conclusively presumed to have accepted the tenancy will end and must vacate the rental unit by the effective date of the Notice.

I accept the evidence before me that the landlord served a 10 Day Notice to the tenants on April 18, 2013 in a manner that complies with the Act. Although the 10 Day Notice issued April 18, 2013 includes amounts previously awarded to the landlord by way of a Monetary Order, I am satisfied that the tenants owed rent for February 2013, March 2013 and April 2013 when the 10 Day Notice was issued. Since the tenants did not pay the outstanding rent or file to dispute the Notice within five days of receiving the Notice, or at any other time, I find the tenancy has ended pursuant to section 39 of the Act. Provided with this decision is an Order of Possession effective two (2) days after service upon the tenants.

With respect to the landlord's monetary claims, I find that unpaid rent for the months up to and including January 2013 have already been awarded to the landlord by way of a previous dispute resolution proceeding and the landlord is at liberty to enforce the previously issued Monetary Order. Accordingly, this decision and the Monetary Order that accompanies it reflect amounts incurred since January 2013.

I accept the evidence before me that the tenants have not paid rent for the months of February 2013 onwards and yet they continue to occupy the rental site. Therefore, I find the landlords entitled to unpaid and/or loss of rent for the months of February 2013 through June 2013 in the amount of \$1,425.00 [\$285.00 x 5 months]. I also award the landlord \$50.00 for the filing fee paid for this Application.

I make no award for NSF cheque administrative fees as I find the provision in the tenancy agreement that provides for NSF service charges is non-compliant with the Manufactured Home Park Tenancy Regulations. The Regulations limit the amount a landlord may seek for an administrative charge for returned cheques to \$25.00.

In light of the above, the landlord is provided a Monetary Order in the sum of \$1,475.00 to serve and enforce as necessary.

Conclusion

The landlord has been provided an Order of Possession effective two (2) days after service upon the tenants. The landlord has been provided a Monetary Order in the sum of \$1,475.00 for unpaid and/or loss of rent for the months of February 2013 through June 2013 to serve and enforce as necessary. .

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: June 04, 2013

---

Residential Tenancy Branch

