



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Parkbridge Lifestyle communities Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* (the “Act”) for an order of possession for unpaid site rent, for a monetary order for unpaid site rent, and to recover the filing fee.

An agent for the landlord (the “agent”) appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide his evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The agent testified under oath that the tenant was served with a package that included the Notice of Hearing and evidence on July 29, 2013 via registered mail addressed to the tenant at the rental site address. A registered mail tracking number was submitted in evidence. The agents stated that the registered mail package was returned as “unclaimed”. Documents served by registered mail are deemed served five days after they are mailed pursuant to section 83 of the *Act*. Based on the above, I am satisfied that the tenant was deemed served as of August 3, 2013.

### Preliminary and Procedural Matter

During the hearing, the agent requested to amend the landlord’s monetary claim to correctly reflect the amount of unpaid site rent and late payment fees from the original claim of \$1,655.00 to \$1,662.00. I find this request reasonable as it is only a difference of \$7.00 and the tenant would be aware of the amount of site rent due under the tenancy agreement and the amount of late payment fees based on section 7 of the tenancy agreement. Therefore, I permit the agent to amend the landlord’s application to \$1,662.00 and note that the landlord has also requested the recovery of the filing fee, which is in addition to the monetary claim of \$1,662.00.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?

### Background and Evidence

The agent stated that a fixed term tenancy was assumed by the tenant on April 1, 2013 through an assignment of a rental site lease and reverted to a month to month tenancy after October 1, 2013. I note that the written tenancy agreement submitted in evidence includes “month-to-month” under section 5 of the tenancy agreement which describes Commencement Date and Length of Tenancy.

Monthly site rent in the amount of \$806.00 is due on the first day of each month. Section 7 of the tenancy agreement includes a late payment charge of \$2.00 per day to a maximum permitted by the current *Manufactured Home Park Tenancy Regulation* (the “*Regulation*”). The maximum late payment fee permitted under section 5(1)(d) of the *Regulation* is \$25.00.

The agent confirmed service of the 10 Day Notice for Unpaid Rent or Utilities, (the “10 Day Notice”), by agent MO posting the 10 Day Notice to the tenant’s door on July 10, 2013 at 2:25 p.m., and witnessed by agent CH. The 10 Day Notice listed \$849.00 owing due July 1, 2013 and had an effective vacancy date of July 20, 2013. The agent stated that the tenant failed to pay any rent for the month of July 2013, and that the landlord suffered a loss of rent for August 2013. The tenant did not dispute the 10 Day Notice or pay any rent since being served with the 10 Day Notice.

The landlord’s monetary claim is for \$1,662.00 comprised of unpaid site rent for July 2013 in the amount of \$806.00, a late payment fee of \$25.00 for July 2013, loss of site rent/revenue for August 2013 of \$806.00, and a late payment fee of \$25.00 for August 2013 loss of rent. The agent agreed to have an order of possession become effective on September 15, 2013, to provide more time to have the rental site vacated as this matter involves a manufactured home, which remains on the rental site.

The landlord provided a copy of the 10 Day Notice, the tenancy agreement, a registered mail tracking number and an agent authorization document in evidence for this proceeding.

### Analysis

Based on the documentary evidence and the undisputed oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

I will first address the length of the tenancy agreement. As noted above, the written tenancy agreement submitted in evidence includes “month-to-month” under section 5 of the tenancy agreement which describes Commencement Date and Length of Tenancy. As a result, I find that the tenancy agreement is actually a month to month tenancy agreement, and not a fixed term tenancy agreement.

**Order of Possession** – I find that the tenant failed to pay the site rent for the month of July 2013, or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. The tenant is conclusively presumed pursuant to section 39 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice which automatically corrects under the *Act* from July 20, 2013 to July 23, 2013. Accordingly, I **grant** the landlord an order of possession to the date requested by the agent, **effective September 15, 2013 at 1:00 p.m.** This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

**Claim for unpaid site rent and loss of site rent** – The agent testified that site rent if \$806.00 for the month of July 2013 has not been paid by the tenant. In addition, the landlord writes in their application that they have suffered a loss of revenue for August 2013 in the amount of \$806.00. The agent has claimed late fees for July 2013 and August 2013 of \$25.00 for each month. Pursuant to section 20 of the *Act*, a tenant must pay site rent when it is due in accordance with the tenancy agreement.

Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement which stipulates that site rent is due monthly on the first of each month. The rental site continues to be occupied as a manufactured home remains on the rental site. The landlord will not regain possession of the unit until after service of the order of possession. I find the landlord has met the burden of proof for unpaid rent for July 2013 and loss of rent/revenue for August 2013. I find the landlord is also entitled to a late payment fee of \$25.00 for July 2013, however, the tenancy ended on July 23, 2013 and the tenant has been overholding since that date, and as a result, I do not find the landlord is entitled to a late payment fee for August 2013 as the landlord has claimed for a loss of rent or revenue for August 2013. Therefore, I do not grant a late payment fee for the month of August 2013 as the tenancy ended on July 23, 2013. I find the landlord has established a monetary claim of **\$1,637.00** comprised of \$806.00 for

unpaid site rent for July 2013, loss of rent/revenue for August 2013 in the amount of \$806.00, and a late payment fee of \$25.00 for July 2013.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the **\$50.00** filing fee.

**Monetary Order – I grant** the landlord a monetary order pursuant to section 67 of the *Act* in the amount of **\$1,687.00** comprised of \$1,637.00 in unpaid rent, loss of rent and a late payment fee, plus the \$50.00 filing fee. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

### Conclusion

I grant the landlord an order of possession effective September 15, 2013 at 1:00 p.m. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

I grant the landlord a monetary order under section 67 in the amount of \$1,687.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: August 29, 2013

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Residential Tenancy Branch

