



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Mirae Investment Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes:

**OPR, MNR, FF**

### Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested an Order of Possession for Unpaid Rent, a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The agent for the landlord provided affirmed testimony that on August 23, 2013 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the tenant via registered mail to the address noted on the Application. A Canada Post tracking number and receipt was provided as evidence of service. The tenant refused to claim the registered mail and it was returned to the landlord.

Section 90 of the Act determines that registered mail is served on the 5<sup>th</sup> day after mailing. Refusal to claim registered mail does not allow a party to avoid service.

Therefore, I find that these documents are deemed to have been served in accordance with section 89 and 90 of the Act; however the tenant did not appear at the hearing.

### Preliminary Matters

The application requesting compensation in the sum of \$1,975.00 was amended to include unpaid rent up to October 1, 2013.

### Issue(s) to be Decided

Is the landlord entitled to an Order of possession for unpaid rent?

Is the landlord entitled to a monetary Order for unpaid rent?

Is the landlord entitled to filing fee costs?

### Background and Evidence

The tenancy commenced on November 1, 2012, rent is \$850.00 per month, due on the 1<sup>st</sup> day of each month. A copy of the tenancy agreement was supplied as evidence.

On July 26, 2013 a 10 day Notice to end tenancy for unpaid rent, which had an effective date of August 5, 2013 was served by registered mail to the rental unit address.

The Notice indicated that the Notice would be automatically cancelled if the landlord received \$1,100.00 within five days after the tenant was assumed to have received the Notice. The Notice also indicated that the tenant was presumed to have accepted that the tenancy was ending and that the tenant must move out of the rental by the date set out in the Notice unless the tenant filed an Application for Dispute Resolution within five days.

Since April 2013 the total amount of rent owed was \$5,950.00; the tenant has paid a total of \$2,400.00 rent during that time. The last payment made of \$850.00 was made on July 15, 2013. The landlord has claimed a total of \$3,550.00 rent owed to October 1, 2013. A breakdown of payments made since April was supplied as evidence.

### Analysis

Section 90 of the Act stipulates that a document that is sent by registered mail is deemed served on the 5<sup>th</sup> day after mailing. Despite the tenant's refusal to claim the registered mail, I find that effective July 31, 2013 the tenant is deemed to have received the Notice ending tenancy. Refusal to claim registered mail does not allow a party to avoid service.

Section 46(1) of the Act stipulates that a 10 Day Notice to End Tenancy is effective 10 days after the date that the tenant receives the Notice. As the tenant is deemed to have received this Notice on July 31, 2013, I find that the earliest effective date of the Notice is August 10, 2013.

Section 53 of the Act stipulates that if the effective date stated in a Notice is earlier than the earliest date permitted under the legislation, the effective date is deemed to be the earliest date that complies with the legislation. Therefore, I find that the effective date of this Notice to End Tenancy was August 10, 2013.

In the absence of evidence to the contrary, I find that the tenant was served with a Notice to End Tenancy that required the tenant to vacate the rental unit on August 10, 2013, pursuant to section 46 of the Act.

Section 46 of the Act stipulates that a tenant has five (5) days from the date of receiving the Notice to End Tenancy to either pay the outstanding rent or to file an Application for Dispute Resolution to dispute the Notice. In the circumstances before me I have no evidence that the tenant exercised either of these rights; therefore, pursuant to section 46(5) of the Act, I find that the tenant accepted that the tenancy has ended. On this basis I will grant the landlord an Order of Possession that is effective 2 days after the Order is served to the tenant.

In the absence of evidence to the contrary, I find that the tenant has not paid rent in the amount of \$3,500.00 to October 1, 2013, inclusive, and that the landlord is entitled to compensation in that amount.

I find that the landlord's application has merit and that the landlord is entitled to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord has been granted an Order of Possession that is effective 2 days after service to the tenant. This Order may be served on the tenant, filed with the Supreme Court of British Columbia and enforced as an Order of that Court.

I find that the landlord has established a monetary claim, in the amount of \$3,600.00, which is comprised of unpaid rent to October 1, 2013, inclusive and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

Based on these determinations I grant the landlord a monetary Order in the sum of \$3,600.00. 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.

I note that the tenancy agreement includes terms that would apply to a tenancy under the Manufactured Home Park Tenancy Act and the Residential Tenancy Act. The landlord confirmed that the landlord owns the manufactured home and that the tenant rents the home. Therefore, reference to site rental is not relevant to the tenancy and rent increases must be given as provided by the Residential Tenancy Act.

#### Conclusion

The landlord is entitled to an Order of possession and a monetary Order.

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 *Residential Tenancy Act*.

Dated: October 02, 2013

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Residential Tenancy Branch

