



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding FIGUEIRA HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This matter dealt with an application by the Landlord for an Order of Possession and a Monetary Order for unpaid rent.

The Landlord said she served the Tenant with the Application and Notice of Hearing (the “hearing package”) by registered mail on October 23, 2013. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord’s hearing package as required by s. 89 of the Act and the hearing proceeded with all parties in attendance.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?
2. Are there rent arrears and if so, how much?
3. Is the Landlord entitled to compensation for unpaid rent and if so how much?

### Background and Evidence

This tenancy started on June 1, 2007 as a month to month basis. Rent is \$440.00 per month payable in advance of the 1<sup>st</sup> day of each month.

The Landlord said that the Tenant did not pay \$5,342.00 of rent and late charges since November, 2012 when it was due and as a result, on October 4, 2013 she posted a 10 day Notice to End Tenancy for Unpaid Rent or Utilities dated October 4, 2013 on the door of the Tenant’s mobile home. The Landlord said the Tenant has made payments against the unpaid rent and receipts were issued stating the Landlord accepted these payments, but was not re-instating the tenancy by accepting the payments. The Landlord said the Tenant’s unpaid rent and late payments total \$5,852.00 as of December, 2013.

The Landlord further indicated that they have tried to work with the Tenant over the last year without success and the Tenant is living on the manufactured home pad with over a year's rent unpaid so the Landlord said she is requesting an Order of Possession for as soon as possible.

The Landlord also sought to recover the \$100.00 filing fee for this proceeding.

The Tenant said he has had a difficult year personally and is not disputing the unpaid rent or late charges. The Tenant said the Landlord is very diligent as a Landlord. The Tenant continued to say he is trying to make payments and would like to continue the tenancy, but he is unable to pay all the unpaid rent in the near future as he works construction and it is slow in the winter season. The Tenant said he would like to work something out with the Landlord.

### Analysis

Section 39(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must pay the overdue rent or apply for dispute resolution. If the Tenant fails to do either of these things, then under section 39(5) of the Act, they are conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice and they must vacate the rental unit at that time.

Under s. 90 of the Act, the Tenant is deemed to have received the Notice to End Tenancy 3 days after it was posted, or on October 7, 2013. Consequently, the Tenant would have had to pay the amount stated on the Notice or apply to dispute that amount no later than October 12, 2013.

I find that the Tenant has not paid the overdue rent and has not applied for dispute resolution. Consequently, I find pursuant to s. 48 (2)(b) of the Act that the Landlord is entitled to an Order of Possession to take effect 48 hours after service of it on the Tenant.

I also find that the Landlord is entitled to recover unpaid rent and late charges from November, 2012 to December, 2013 in the amount of \$5,852.00. This amount is not disputed by the Tenant.

As the Landlord has been successful in this matter, she is also entitled to recover from the Tenant the \$100.00 filing fee for this proceeding. The Landlord will receive a monetary order for the balance owing as following:

Rent arrears and late charges up to December 2013:	\$5,852.00
Recover filing fee	\$ 100.00
Subtotal:	\$ 5,952.00

Balance Owing	\$5,952.00
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### Conclusion

An Order of Possession effective 2 days after service of it on the Tenant and a Monetary Order in the amount of \$5,952.00 have been issued to the Landlord. A copy of the Orders must be served on the Tenant: the Order of Possession may be enforced in the Supreme Court of British Columbia and the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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 03, 2013

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Residential Tenancy Branch

