



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REKTREK RESOURCES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent, a monetary order for unpaid rent, and to recover the filing fee for the Application, pursuant to the *Manufactured Home Park Tenancy Act* (the "Act").

Only the Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified he served the Tenant with the Application and Notice of Hearing by registered mail, sent on November 27, 2013. Under the Act the Tenant was deemed served with these five days later. I note that refusal or neglect to collect registered mail is not a ground for Review under the Act. I find the Tenant has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession and monetary relief?

### Background and Evidence

Based on the testimony of the Agent for the Landlord, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of \$3,881.00 in rent on November 8, 2013, by registered mail, deemed served on November 13, 2013 (the "Notice").

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains the Tenant had five days to dispute the Notice by filing an Application for Dispute Resolution. The Agent testified the Tenant did not pay the rent or serve him with documents indicating he had filed an Application to dispute the Notice.

The Agent for the Landlord testified the Tenant has failed to pay this rent repeatedly in the past and that the parties have had Dispute Resolution hearings in the past. The Agent explained and submitted documents showing there have been several Provincial Court proceedings to enforce previous monetary orders. The Agent testified that the Landlord is reluctant to enforce the order of possession because of the cost.

The Agent for the Landlord further testified that the Tenant has, in the past, disputed he owns the manufactured home. The Landlord has provided evidence that the Tenant is the owner of the manufactured home although he has failed to register ownership in the appropriate registry.

The Agent for the Landlord further testified that the Tenant refuses to sign a new tenancy agreement.

#### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 39(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 20 of the Act, the Tenant must pay the rent unless the Tenant has some authority under the Act to not pay rent. In this situation I find there is no evidence that the Tenant had authority under the Act to not pay rent.

I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

I grant a monetary order as I find that the Landlord has established a total monetary claim of **\$3,931.00** comprised of unpaid rent from June of 2012, to November of 2013, and the \$50.00 fee paid by the Landlord for this application. I note the Tenant made one partial payment of rent in June of 2012, and one full rent payment in October of 2013, during this time, according to the ledger provided by the Landlord, and the order amount accounts for those payments.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Based on the evidence from the Landlord and because of previous proceedings, I further find it is more likely than not that the Tenant is the *de facto* owner (owner in fact) of the manufactured home for the purposes of the Act. The Landlord provided documents from the local municipal authority to this effect; the Tenant has appeared at Provincial Court hearings for enforcement of a monetary order for unpaid rent in the amount of \$8,700.00, and the Landlord had received a decision against the Tenant from

the Branch in May of 2012. It is open to the Tenant to now try to argue he does not own the manufactured home or at least have care and control over it, in order to escape liability for unpaid rents.

I further note that by operation of the Act the Tenant was assigned the tenancy agreement for the site by the previous owner and both the Landlord and Tenant are bound by the tenancy agreement for the site entered into by the previous owners of the park and the manufactured home.

The Landlord and the Tenant are free to agree to enter into a new tenancy agreement; however, until that occurs I find and order that the previous tenancy agreement applies to this tenancy by operation of the Act. **Nevertheless, this tenancy has now ended pursuant to the Act and the Tenant is required to remove the manufactured home from the site under the order of possession. The Landlord may enforce this through the Supreme Court of British Columbia and if they do so, must use the service of a Bailiff to remove the manufactured home from the site at a cost to be charged to the Tenant.**

The Landlord had a previous order of possession granted for the site in May of 2012. This led me to caution the Agent for the Landlord during the hearing that now the tenancy is ended the Landlord should take steps to enforce both the monetary order and the order of possession. Under section 7 of the Act, the Landlord has a duty to minimize his losses, which would include taking steps to prevent future rent losses, by enforcing the order of possession against the Tenant through the Supreme Court and having the home removed from the site and claiming against the Tenant for those costs. This would prevent future losses to the Landlord caused by non-payment of rent from this Tenant. The Landlord is further cautioned that failure to mitigate losses may result in a denial of future orders by other Arbitrators.

#### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession and a monetary order for the rents due.

The Tenant has appeared in Provincial Court for enforcement proceedings of a previous monetary award to this Landlord, has rented the manufactured home out to a third party and has not provided evidence that anyone else owns the rental unit. The Landlord has provided evidence from the local municipal authority that tends to indicate the Tenant is the owner of the manufactured home. For these reasons, the Tenant has been found to be the de facto owner of the manufactured home for the purposes of the Act in these proceedings.

As the Landlord had one previous order of possession and did not enforce it, and has subsequently experienced further losses of rents, the Landlord is cautioned regarding the duty under the Act to mitigate losses.

This decision is final and binding on the parties, except as 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: January 15, 2014

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Residential Tenancy Branch

