



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 312280 BC Ltd.  
Riverside Mobile Home Park  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes** OPR, MNR

### **Introduction**

This is the Landlord's Application an Order of Possession and a Monetary Order for unpaid rent.

Both parties provided affirmed testimony.

It was determined that the Landlord served the Tenant with the Notice of Hearing documents by registered mail sent January 30, 2014. The Landlord provided a copy of the registered mail receipt and tracking numbers in evidence.

### **Issue(s) to be Decided**

Is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?

### **Background and Evidence**

This tenancy started in 2007. Current pad rent is \$270.00. The Landlord's agent stated that the Tenant has been consistently in arrears over the term of the tenancy. He testified that the Tenant was in arrears in the amount of \$425.00 - \$700.00 every year, but that the Tenant was attempting to catch up on arrears until March, 2013, when she stopped paying rent, except for the month of June, 2013.

The Landlord's agent issued a Notice to End Tenancy for unpaid rent on September 21, 2013, and handed the Notice to End Tenancy the Tenant on the same day. On September 30, 2013, the Tenant gave the Landlord \$270.00 towards arrears. On October 7, 2013, the Landlord served the Tenant with notice that the payment and all future payments were accepted only as payment towards accumulated arrears. A copy of the notice was provided in evidence. The Tenant made another payment in the amount of \$270.00 on March 16, 2014, which was also applied towards arrears.

The Landlord provided a written calculation of the arrears as at January 1, 2014, as follows:

| Year                              | Arrears from previous year | Total rent due for year | Total rent paid | Owing for each year |
|-----------------------------------|----------------------------|-------------------------|-----------------|---------------------|
| 2007                              |                            | \$440.00                | 0               | \$440.00            |
| 2008                              | \$440.00                   | \$3,080.00              | \$2,400.00      | \$680.00            |
| 2009                              | \$680.00                   | \$3,245.00              | \$2,920.00      | \$425.00            |
| 2010                              | \$425.00                   | \$3,595.00              | \$3,130.00      | \$465.00            |
| 2011                              | \$465.00                   | \$3,660.00              | \$3,190.00      | \$470.00            |
| 2012                              | \$470.00                   | \$3,710.00              | \$2,916.00      | \$794.00            |
| 2013                              | \$794.00                   | \$4,034.00              | \$1,070.00      | \$2,964.00          |
| January, 2014                     | \$2,964.00                 | \$270.00                | 0               | \$270.00            |
| TOTAL OWING as at January 1, 2014 |                            |                         |                 | <b>\$3,234.00</b>   |

The Tenant's agent stated that she agreed with the Landlord's submissions. She stated that she did not know that the Tenant was so far in arrears, or she would have paid them earlier. The Tenant's agent stated that the Tenant was ill.

### **Analysis**

The payment of rent in a tenancy agreement is a material term of the contract. This means that the term, such as payment of rent, is so important to the fulfillment of the contract that the most minor of breaches gives the other party the right to end the contract. Failure to pay rent gives the Landlord the right to end the tenancy.

Guideline 5 of the *Residential Tenancy Policy Guideline Manual* explains the duty to mitigate as follows:

*Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.*

The Landlord's failure to issue a Notice to End Tenancy for Unpaid Rent in a timely manner can be considered a failure to mitigate the continued loss the Landlord suffered. However, the Tenant's agent acknowledged the continued breach and the Tenant made attempts to fulfill her obligations by payments acknowledged by the Landlord and as a result I am satisfied that the Landlord has made reasonable attempts to collect the sum owed.

I accept that the Tenant has fundamentally breached the tenancy agreement by failing to pay rent and that the Landlord has established his monetary claim. However, continued failure of the Landlord to take reasonable steps to minimize future losses could result in a finding that the Landlord cannot recover those damages.

I accept the Landlord's agent's undisputed testimony that the Tenant was served with the Notice to End Tenancy on September 21, 2013. I accept the evidence before me that the Tenant failed to pay the rent owed in full within the 5 days granted under Section 39 (4) of the *Act*.

Based on the foregoing, I find that the Tenant was conclusively presumed under Section 39(5) of the *Act* to have accepted that the tenancy ended on October 1, 2013.

The Tenant made two payments totalling \$540.00 towards arrears after the Notice to End Tenancy was issued. Therefore, I find that the balance owed for rent as at January 1, 2014, was \$2,694.00 (\$3,234.00 - \$540.00). However, the Landlord has received no rent for the months of February and March, 2014, and therefore I find that he is entitled to the amount claimed in his application.

### **Conclusion**

I hereby provide the Landlord with an Order of Possession effective **two days after service** of the Order upon the Tenant. This Order may be filed in the Supreme Court and enforced as an Order of that Court.

I hereby provide the Landlord with a Monetary Order in the amount of **\$3,234.00** for service upon the Tenant. This Order may be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court.

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: March 19, 2014

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Residential Tenancy Branch

