



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STONECLIFF PROPERTIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") for an Order of Possession and a Monetary Order for unpaid rent or utilities and to recover the filing fee for the cost of making the Application.

An agent for the Landlord appeared for the hearing and provided affirmed testimony during the hearing and supplied documentary evidence in advance of the hearing.

The Landlord's agent testified that he had served the Tenant with a copy of the Application and the Notice of Hearing documents by registered mail on April 2, 2014; the Canada Post tracking number was provided as evidence for this method of service. Section 83 of the *Manufactured Home Park Tenancy Act* (the "Act") states that a document served by mail is deemed to have been received five days after it is mailed. As a result, I find that the Tenant was deemed served on April 7, 2014.

The Tenant did not appear for the hearing and did not provide written evidence prior to the hearing, despite being served with the hearing documents in accordance with the Act. As a result, I considered the undisputed evidence of the Landlord in this decision.

### 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?

### Background and Evidence

The Landlord's agent testified that this tenancy was inherited by the Landlords when they took ownership of the manufactured home park in November, 2013 and no written

tenancy agreement was in place. The Landlord's agent testified that the tenancy was a month to month tenancy and that rent is payable by the Tenant per month to the Landlord on the first day of each month in the amount of \$215.40.

The Landlord's agent testified that the Tenant failed to pay full rent for the months of January, February and March, 2014 for a total amount of \$751.20. This amount included three \$35.00 late fees for nonpayment of rent.

As a result, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"), on March 7, 2014 by registered mail; the Landlord provided a copy of the Canada Post tracking number and report which indicates the Tenant received and signed for the Notice on March 21, 2014. The Notice was also provided as evidence and shows an expected date of vacancy of March 22, 2014, due to \$751.20 of unpaid rent that was due on March 1, 2014.

As a result, the Landlord requests an Order of Possession and a Monetary Order for unpaid rent.

### Analysis

Having examined the Notice, I find that the contents on the approved form complied with Section 45 of the Act. I also find that based on the Canada Post tracking number provided by the Landlord, the Tenant was served the Notice by registered mail on March 7, 2014. Using the deeming provisions of section 83 of the Act, I find that the Tenant was deemed served with the Notice on March 12, 2014.

Section 39(4) and (5) of the Act provides that within five days of a Tenant receiving a Notice, the Tenant must pay the overdue rent or make an Application to cancel the Notice; if the Tenant fails to do either, then they are conclusively presumed to have accepted the end of the tenancy and they must vacate the rental site on the date to which the Notice relates.

As the Tenant failed to comply with section 39(4) of the Act, I find that the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice and therefore, the Landlord is entitled to an Order of Possession and a Monetary Order in the amount of **\$646.20** for unpaid rent relating to January, February and March, 2014.

Section 7 of the Residential Tenancy Regulation stipulates that a Landlord may not charge a late payment of rent fee unless the tenancy agreement provides for that fee. As there was no evidence of a tenancy agreement between the parties that contained a

clause which provides for such a late fee, I find that the Landlord is not entitled to the late payment fees claimed in the amount of \$105.00 and this portion of the Landlord's Application is dismissed.

As the Landlord has been successful in this matter, the Landlord is however entitled to the \$50.00 filing fee for the cost of this Application pursuant to Section 65(1) of the Act.

Therefore, the total amount payable by the Tenant to the Landlord is \$696.20.

### Conclusion

For the reasons set out above, I grant the Landlord an Order of Possession for the manufactured home park site, effective **2 days after service on the Tenant**. This order may then be filed and enforced in the Supreme Court as an order of that court if the Tenant fails to remove the manufactured home.

I also grant the Landlord a Monetary Order pursuant to Section 60 of the Act in the amount of **\$696.20**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment.

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: May 15, 2014

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Residential Tenancy Branch

