



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1027110 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing dealt with the landlords' application pursuant to the *Manufactured Home Park Tenancy Act* (the Act) for:

- an order of possession for unpaid rent pursuant to section 48;
- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 60;
- authorization to recover their filing fee for this application from the tenants pursuant to section 65.

In advance of this hearing, the tenant provided written authorization for his agent to act on his behalf in this matter.

The tenant's agent (the agent) attended this hearing. The individual landlord, who is also an agent of the corporate landlord, (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord is an employee of the corporate landlord. The landlord confirmed that he had authority to act on behalf of the corporate landlord.

The landlord testified that the landlords served the tenant with the dispute resolution package on 17 March 2015 by registered mail. The landlords provided me with Canada Post tracking numbers that showed the same. The agent confirmed receipt of the dispute resolution package. On the basis of this evidence, I am satisfied that the tenant was deemed served with the dispute resolution package pursuant to sections 82 and 83 of the Act.

The landlord testified that the landlords served the tenants with the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) on 5 March 2015 by posting the notice to the tenant's door. On the basis of this evidence, I am satisfied that

the tenant was deemed served with the 10 Day Notice pursuant to sections 81 and 83 of the Act on 8 March 2015.

#### Preliminary Issue – Service of Tenant’s Evidence

Rule 3.15 of the Rules of Procedure sets out that an applicant must receive evidence from the respondent not less than seven days before the hearing.

The agent testified that the tenant did not serve the landlords with the tenant’s evidence. The evidence included two receipts for payments issued from the landlord and three handwritten notes. One of the handwritten notes is the agent’s authorization to act.

I am exercising my discretion to admit the receipts into evidence as they were provided by the landlord to the tenant so he is aware of their contents. I accept the handwritten note providing the agent with authority to act as it is of a procedural nature; however, the other two handwritten notes are excluded from evidence as the landlords were not served in accordance with the Rules.

#### Preliminary Issue – Amendment to Application

Paragraph 57(3)(c) of the Act allows me to amend an application for dispute resolution.

The landlords applied for dispute resolution under the *Residential Tenancy Act*. This tenancy relates to the rental of a manufactured home site and not the manufactured home. As such, this application should have been made under the Act. The landlord asked that I exercise my discretion to amend the application to bring it under the correct act. As there is no undue prejudice to the tenant in doing so, I allowed the amendment.

At the hearing, the landlord asked to amend this application to withdraw the landlords claim for a monetary order for rent arrears as the tenant has paid the outstanding amounts. I have allowed the amendment as there is no prejudice to the tenant.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent? Is the landlord entitled to recover the filing fee for this application from the tenant?

#### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the agent, not all details of the submissions and / or arguments are reproduced here. The principal aspects of the landlords' claim and my findings around it are set out below.

This tenancy began on or about 1 September 2012. The tenant and the former owners of the manufactured home site entered into a written tenancy agreement. I was not provided with a copy of this agreement. The landlord testified that the current corporate landlord of the manufactured home site purchased the manufactured home park in or early 2015. Current monthly rent of \$548.00 is due on the first.

On 5 March 2015, the landlords issued the 10 Day Notice to the tenant. The 10 Day Notice was dated 5 March 2015 and set out an effective date of 15 February 2015. The 10 Day Notice set out that the tenant failed to pay \$548.00 in rent that was due on 1 March 2015.

On 16 March 2015, the tenant paid \$548.00 towards his rental arrears. The landlord issued a receipt to the tenant that the payment was received on the basis of "use and occupancy only". On or about 28 March 2015, the tenant paid \$550.00 towards his April rent. The landlord issued a receipt to the tenant that the payment was received on the basis of "use and occupancy only".

The agent testified that the tenant tried to pay his rent to the landlords but that the landlords did not return telephone calls made to the landlord from 13 March 2015 onward. The landlord testified that he never received any calls from the tenant and that he was on the manufactured home park on 10 March 2015 and was not approached by the tenant. The landlord testified that he did not try to avoid the tenant.

### Analysis

Pursuant to section 39 of the Act, a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end tenancy effective on a date that is not earlier than ten days after the date the tenant receives the notice.

The landlords have not reinstated the tenancy by accepting payments from the tenant as the landlord issued receipts to the tenants stating that the funds were accepted on the basis of the tenant's "use and occupancy only".

I find that the landlord did not take any action to avoid collecting the tenant's rent. I find on a balance of probabilities, that the tenant did not attempt to pay or pay his rent within five days. The tenant has not made application pursuant to subsection 39(4) of the Act

within five days of receiving the 10 Day Notice. In accordance with subsection 39(5) of the Act, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenants to vacate the premises by 18 March 2015. The landlord has accepted payment for the use and occupancy of the rental unit until the end of this month. Accordingly, the landlord is entitled to an order of possession effective at one o'clock in the afternoon on 30 April 2015.

As the landlords were successful in this application, I find that the landlords are entitled to recover the \$50.00 filing fee paid for this application.

### Conclusion

I issue a monetary order in the landlord's favour in the amount of \$50.00.

The landlord is provided with this order in the above terms and the tenant(s) must be served with this order as soon as possible. Should the tenant(s) fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

The landlord is provided with a formal copy of an order of possession. Should the tenant(s) fail to comply with this order, this order may be filed and enforced as an order of the Supreme Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under subsection 9.1(1) of the Act.

Dated: April 23, 2015

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Residential Tenancy Branch

