



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNR, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for an Order of Possession and a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenant for the cost of the application.

The landlords both attended the hearing, one of whom gave affirmed testimony. However, despite being served with the Landlord's Application for Dispute Resolution and notice of this hearing on September 26, 2015 by registered mail, no one for the tenant attended the call. The line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and the only participants who joined the call were the landlords. The landlord testified that the tenant was served on that date and in that manner and orally provided a tracking number assigned by Canada Post for the registered mail. The landlords were given the opportunity to provide to me by facsimile a copy of the Canada Post tracking print-out which has been received. I have reviewed that document, and I find that the tenant has been served in accordance with the *Manufactured Home Park Tenancy Act*.

The landlords also provided evidentiary material in advance of the hearing, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Are the landlords entitled under the *Manufactured Home Park Tenancy Act* to an Order of Possession for unpaid rent?
- Have the landlords established a monetary claim as against the tenant for unpaid rent?

- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for late rent fees?

### Background and Evidence

The landlord testified that the landlords purchased the manufactured home park in June, 2013 and the tenant was resident in the park at that time, residing in a manufactured home that the tenant owns. Rent in the amount of \$275.00 per month is payable in advance on the 1<sup>st</sup> day of each month.

The tenant failed to pay rent when it was due for July, 2015 and continued to neglect to pay rent for August and September, 2015. The landlord's park manager served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on September 10, 2015 by posting it to the door of the manufactured home of the tenant. A copy of the notice has been provided and it is dated September 10, 2015 and contains an effective date of vacancy of September 21, 2015. It states: "You have failed to pay rent in the amount of \$275.00 that was due Sep 1/15 + past rent." The landlord testified that at that time the tenant owed \$825.00. A copy of a Proof of Service document has also been provided, signed by the landlords' park manager and a witness. The landlord also testified that the following day, September 11, 2015, the landlord sent a copy of the notice to the tenant by registered mail, and a copy of the Canada Post cash register receipt and Registered Domestic Customer Receipt have been provided.

The landlord further testified that although there is no written tenancy agreement, and none was provided to the landlords from the previous owner, the Park Rules contain a late payment clause of \$25.00 per late payment of rent. A copy of the Park Rules has not been provided, and the landlord was not able to say whether or not it was signed by the tenant or agreed to.

The tenant is now in arrears of rent \$1,375.00 and owes \$125.00 for late fees. The landlords learned from the park manager in September, 2015 that the tenant is no longer resident in the manufactured home but the manufactured home remains on the manufactured home site, and the tenant has not provided the landlords with a forwarding address.

The landlords seek an Order of Possession of the manufactured home site, a monetary order for \$1,375.00 for unpaid rent, a monetary order for \$125.00 for late fees, and recovery of the \$50.00 filing fee.

## Analysis

The *Manufactured Home Park Tenancy Act* states that once a tenant is served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, the tenant has 5 days to pay the rent in full or dispute the notice by filing an application for dispute resolution. If the tenant does neither, the tenant is conclusively presumed to have accepted the end of the tenancy and must vacate the manufactured home site by the effective date of the notice, which must be no less than 10 days after service, or deemed service. In this case, I am satisfied that the tenant was served with the notice by posting it to the door of the manufactured home on September 10, 2015, which is deemed to be served 3 days later, or September 13, 2015. Therefore, the effective date of vacancy would be September 23, 2015. The tenant has not served the landlords with an application for dispute resolution disputing the notice and has not paid the rent in full, and therefore I find that the tenant is conclusively presumed to have accepted the end of the tenancy. I find that the landlords are entitled under the *Act* to an Order of Possession of the manufactured home site on 2 days notice to the tenant.

Having heard the testimony of the landlord, and upon reviewing the documentation provided, and in the absence of any evidence to the contrary, I find that the landlords have established a monetary claim for unpaid rent in the amount of \$1,375.00.

With respect to the landlords' claim for late fees, the *Act* specifies that a landlord may collect late rent fees if such a term is contained in the tenancy agreement:

### **Non-refundable fees charged by landlord**

**5** (1) A landlord may charge any of the following non-refundable fees:

- (a) direct cost of replacing keys or other access devices;
- (b) direct cost of additional keys or other access devices requested by the tenant;
- (c) a service fee charged by a financial institution to the landlord for the return of a tenant's cheque;
- (d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;
- (e) a fee for services or facilities requested by the tenant, if those services or facilities are not required to be provided under the tenancy agreement.

(2) A landlord must not charge the fee described in paragraph (1) (d) unless the tenancy agreement provides for that fee.

In this case, there is no written tenancy agreement, and the landlord testified that the clause is contained in the Park Rules, but was not able to advise whether or not the tenant signed the Park Rules or agreed to the term. No copy has been provided, and therefore, I dismiss the landlords' application for late fees of rent.

Since the landlords have been partially successful with the application the landlords are also entitled to recovery of the \$50.00 filing fee.

### Conclusion

For the reasons set out above, I hereby grant an Order of Possession of the manufactured home site in favour of the landlords on 2 days notice to the tenant.

I further grant a monetary order in favour of the landlords as against the tenant pursuant to Section 60 of the *Manufactured Home Park Tenancy Act* in the amount of \$1,425.00.

These orders are final and binding and may be enforced.

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: November 26, 2015

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Residential Tenancy Branch

