



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HJK ENTERPRISES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNR MMDC O FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Landlord on November 12, 2015. The Landlord filed seeking to obtain a Monetary Order for: unpaid rent; for money owed or compensation for damage or loss under the *Act*, Regulation, or tenancy agreement; to recover the cost of the filing fee from the Tenants; and to obtain an Order of Possession based on the Tenants' notice to end tenancy.

The hearing was conducted via teleconference and was attended by the Landlord and both Tenants. Each person gave affirmed testimony. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

On November 12, 2015 the Landlord submitted 23 pages of evidence to the RTB. The Tenants acknowledged receipt of these documents and no issues regarding service or receipt were raised. As such, I accepted the Landlord's submission as evidence for these proceedings.

On November 16, 2016 the Landlord submitted 3 pages of evidence to the RTB. That evidence consisted of copies of Canada Post receipts for the registered mail that had been sent to the Tenants.

No documentary evidence was submitted to the RTB from the Tenants.

Both parties were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Following is a summary of those submissions and includes only that which is relevant to the matters before me.

### Issue(s) to be Decided

1. Has the Landlord proven entitlement to possession of the rental site?
2. Has the Landlord met the burden of prove to be granted a Monetary Order?

### Background and Evidence

The Tenants entered into a month to month tenancy agreement to occupy the manufactured home park site (the Site) on March 26, 2007. Rent began at \$375.00 and as of May 1, 2015 rent was increased to \$530.00 payable on the first of each month.

The Landlord testified that on September 20, 2015 he received written notice from the Tenants to end their tenancy effective September 30, 2015. The Landlord stated that the manufactured home remains on the Site and is empty, moldy, and unlivable.

The Landlord submitted evidence of a cheque dated 2015-06-10 written by the Tenants for \$1,060.00 as payment for the May and June 2015 rent. The Landlord stated that was the last payment for rent he had received.

The Landlord now seeks to recover the unpaid rent for the seven months from July 2015 to January 2016 in the amount of \$3,710.00 (7 x \$530.00). The Landlord indicated that he initially filed for unpaid rent up until November 2015 as he submitted his application on November 12, 2015. The hearing was not scheduled until January 13, 2016 which has caused him to lose two more month's rent for December and January. As a result he requested that his application be amended to include the two additional months.

The Landlord also sought to recover the \$25.00 late payment fees for the period of July 2015 to January 2016 for a total amount of \$175.00. The Landlord submitted a copy of the tenancy agreement which provides for a maximum late payment fee of \$25.00 per month at clause 3(a)(ii) on page 2 of the agreement.

The Tenants testified that they served the Landlord the notice to end tenancy which also included an offer for the Landlord to purchase their manufactured home. The Tenants submitted that they were not able to reach an agreement with the Landlord on the purchase price so the manufactured home continued to be owned by the Tenants.

The Tenants argued that the date on their June 2015 rent cheque had been altered by the Landlord to make it appear like the rent was late. They asserted that they wrote the cheque out for June 1<sup>st</sup> and not June 10<sup>th</sup>, 2015.

The Tenants testified that they sold their manufactured home on January 8, 2016 to a person named R. They stated that R had applied to the Landlord to live in the home in its current location.

The Landlord denied changing the Tenants' cheque. He asserted that he was never contacted by a person named R. He testified that a person by the name of J had contacted him before Christmas about purchasing the home and that he told J the home did not comply with health and safety standards and could not be sold for occupation as a home.

The Tenants argued that R had talked to the Landlord about renovating the home on the Site to make it livable. They said they took R word about contacting the Landlord. No evidence was submitted as proof that the home had been sold.

The Landlord disputed the Tenants' submissions and stated that he would not agree to allow someone to renovate the home on the Site. He submitted that he was seeking vacant possession of the site for as soon as possible and the monetary order for the unpaid rent and late payment fees.

As the hearing was being concluded the Tenants stated that they had given the Landlord a cheque for July 2015 rent. They then stated the cheque had never been cashed and they did not know where it was.

### Analysis

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

**Section 7** of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 60 of the *Act* states:

Without limiting the general authority in section 55(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 38(1) of the *Act* provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 46 (1) of the Act provides that if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) as applicable.

Subsection (2) of Section 46 states that if the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

The undisputed evidence was the Landlord received the Tenants' notice to end their tenancy on September 20, 2015. Therefore, the effective date of the Notice would be **October 31, 2015**, pursuant to sections 38 and 46 of the *Act*.

Section 48(2)(a) of the *Act* stipulates that a landlord may request an order of possession of a manufactured home site by making an application for dispute resolution if a notice to end the tenancy has been given by the tenant.

I favored the Landlord's submissions over the Tenants' submissions because the Landlord's submissions were forthright, credible, and supported by documentary evidence. The Tenants' submissions were unsupported by evidence and lacked consistency. The Tenants made no mention of a cheque being issued to the Landlord in July during the time they were speaking about the June 2015 cheque and how rent had been paid. It was not until the hearing had ended when the Tenants suddenly wanted to submit that another cheque had been issued and not cashed.

Furthermore, the Tenants made no mention that their alleged purchaser wanted to renovate the home on site while presenting their evidence about the home being sold. It was not until after the Landlord confirmed that a different person had contacted him about the home when the Tenants claimed their purchaser was intending to renovate the home.

Based on the above, I find the Landlord provided sufficient evidence to be granted an Order of Possession based on the Tenants' notice to end tenancy. This matter requires the Tenants to provide vacant possession of the manufactured home site which means the Tenants will have to arrange to have the existing manufactured home removed. Therefore, I grant the Order of Possession effective January 31, 2016 upon service on the Tenants, to allow time for the removal of the manufactured home, pursuant to section 48 of the *act*.

Section 20 of the Act stipulates in part, that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

The Landlord claimed unpaid rent of \$2,120.00 for the four months from July to October 2015 (4 x \$530.00), in accordance with section 20 of the *Act*. The undisputed evidence confirmed that no rent had been paid for these four months. Based on the

aforementioned, I find the Landlord has met the burden of proof and I award him unpaid rent from July to October 2015 in the amount of **\$2,120.00**.

Section 57(3) of the *Act* stipulates that subject to the rules of procedure established under section 9 (3) [*director's powers and duties*], the director may deal with any procedural issue that arises; make interim or temporary orders; and amend an application for dispute resolution or permit an application for dispute resolution to be amended.

The Landlord requested that his monetary order request be amended to include the months of December 2015 and January 2016 because the hearing date for his application was not scheduled until January 13, 2016. In consideration of the length of time it takes to schedule a hearing for Dispute Resolution I find it would be prejudicial to the Landlord if his request to amend his application were denied in this case. The Tenants continue to occupy the rental site with their manufactured home and ought to have expected that they would be required to pay for that occupation. The Order of Possession has been issued effective **January 31, 2016**. Accordingly, I grant the amendment to the Landlord's application pursuant to section 57(3) of the *Act*.

As noted above this tenancy ended **October 31, 2015**, in accordance with the Tenants' Notice to end tenancy. Therefore I find the Landlord is seeking money for loss of rent and/or use and occupancy of the Site for the three month period of November 2015 to January 2016, not rent. The Tenants continue to have their manufactured home on the Site and will have to make arrangements to have it removed by January 31, 2016. Therefore, I conclude the Landlord is entitled to use and occupancy and loss of rent for the entire three month period from November 2015 to January 2016 for a total amount of **\$1,590.00**.

**Section 7 of the Regulations** stipulates that a landlord may charge a tenant a non-refundable fee for late payments providing that the tenancy agreement provides for that fee.

The tenancy agreement provides for a maximum of \$25.00 for late payment fees in accordance with # 7 of the *Residential Tenancy Regulation*.

In the presence of the Landlord disputing the Tenants' testimony, I find the Tenants submitted insufficient evidence to prove the Landlord altered their June 2015 rent cheque. Therefore, I accept that the evidence supports the rent payment had been late or unpaid for the period of May 2015 to October 2015. Therefore I find the Landlord has proven the loss and I award their claim for six months late fees for the period of May 2015 to October 2015 in the amount of **\$150.00** (6 x \$25.00).

As noted above, this tenancy ended **October 31, 2015**, in accordance with the Tenants' notice to end tenancy. Provisions such as late payment fees provided in the tenancy agreement are no longer in effect once a tenancy has ended. Therefore, I find the

Landlord is not entitled to claim late payment fees for the period of November 2015 to January 2016, and the claim is dismissed, without leave to reapply.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

The Landlord has primarily been successful with their application; therefore I award recovery of the **\$50.00** filing fee.

### Conclusion

The Landlord was successful with their application and was granted an Order of Possession effective **January 31, 2016 at 1:00 p.m.** and a Monetary Order for **\$3,910.00** (\$2,120.00 + \$1,590.00 + \$150.00 + \$50.00)

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: January 14, 2016

---

Residential Tenancy Branch

