



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0730751 BC LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** OPR, OPC, MNR, MND

### **Introduction**

This hearing was convened in response to an application by the landlord pursuant to the *Manufactured Home Park Tenancy Act* (the Act) for Orders as follows:

1. An Order of Possession - Section 47;
2. A Monetary Order for unpaid rent - Section 60

Both parties attended the hearing. The tenant had benefit of assistance. Despite being incarcerated from February 25 to April 25, 2016 the tenant stated they were aware of the landlord's application, as above, and the landlord's claim. Pursuant to Section 64(2)(c) I found the tenant was sufficiently served for the purposes of this hearing. Both parties were given opportunity to present all relevant evidence in respect to the claim and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence in this matter.

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

Is the notice to end tenancy valid?

Is the landlord entitled to an Order of Possession?

Is the landlord entitled to the monetary amounts claimed?

### **Background and Evidence**

The relevant evidence in this matter is as follows. Pursuant to a written tenancy agreement the manufactured home site tenancy began January 01, 2015. Rent in the amount of \$311.00 is payable in advance on the first day of each month. The tenant failed to pay rent in the month of March 2016 and on March 07, 2016 the landlord served the tenant with a notice to end tenancy for non-payment of rent by posting it to the manufactured home and also sending it by registered mail to the home site. The

tenant further failed to pay rent in the month of April and May 2016. The landlord acknowledged the Notice should only have stated the amount owing for unpaid rent of the manufactured home site in the amount of \$311.00 as any other amount collected by the landlord is not relevant to this tenancy.

The tenant testified they were incarcerated from February 25 to April 25, 2016. They argued that as a result they were not served the landlord's Notice to End. However, the tenant acknowledged they did not inform the landlord of their incarceration and did not pay the rent for March 2016 and did not make arrangements to pay any rent during their absence to April 25, 2016.

The parties agree that the manufactured home on the site was severely damaged by fire on March 04, 2016 during the tenant's incarceration – and was rendered uninhabitable and remains such. The landlord provided that arson is suspected.

The landlord seeks to end the tenancy and recover the unpaid rent.

### **Analysis**

Based on the evidence of both parties I find as follows. **Section 37** of the Act addresses how a tenancy ends, and in *relevant part*, states as follows:

#### **How a tenancy ends**

**37** (1) A tenancy ends only if one or more of the following applies:

(e) the tenancy agreement is *frustrated*;

(f) the Director orders that the tenancy is ended.

I find that resulting from the fire of March 04, 2016 the tenancy agreement became *frustrated* and as a result the tenancy effectively ended. *The Frustrated Contract Act* and the legal doctrine of *frustration of contract* apply to tenancy agreements. A contract (in this matter the tenancy agreement) is *frustrated* where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. In this matter the manufactured home was sufficiently consumed by fire so as to render it inhabitable with the situation beyond the

control of the parties. The circumstances clearly affected the nature, meaning, purpose, and consequences of the tenancy agreement so far as either or both of the parties are concerned. The result rendered the home site pad unusable for the purpose intended and contracted / agreed under the tenancy agreement. As a result, **I Order** the tenancy **ended March 04, 2016** pursuant to Section 37(1)(e) of the *Manufactured Home Park Tenancy Act*. The landlord does not require an Order of Possession as possession automatically reverted to the landlord once the tenancy ended.

Given the parties' agreement the rent for March 2016 was not paid, I find the landlord is owed rent to the day the tenancy ended in accordance with Section 37(1)(e) – which I find is in the pro-rated amount of \$42.00. The landlord is further entitled to recover their filing fee of \$100.00 for a total award to the landlord in the amount of **\$142.00**.

### **Conclusion**

**I grant** the landlord an Order under Section 60 of the Act for the amount due of **\$142.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

**This Decision is final and binding on both parties.**

*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 04, 2016

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Residential Tenancy Branch