



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CRYSTAL RIVER COURT LTD.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      OPR MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* (the “*Act*”) by the landlord for an order of possession for unpaid site rent, for a monetary order for unpaid site rent, and to recover the cost of the filing fee. The landlord is also requesting late fees in accordance with the tenancy agreement.

An agent for the landlord, (the “agent”), appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide the landlord’s evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The agent testified that both tenants are deceased with tenant M.R. having passed away a couple years ago and tenant H.S. passing away in April of 2016 approximately. As a result, the Estate of both tenants has been named. The agent provided affirmed testimony that both registered mail packages, one for each Estate of the tenants were mailed by registered mail to the rental site address as the Executor advised the agent by phone that the Estate would still be accepting mail via the rental site address. This is supported by the agent’s testimony that site rent for both May and June 2016 were paid by the Estate and that no rent has been paid for July and August 2016. Based on the evidence presented and without any evidence to prove to the contrary, I accept that the Estates of both tenants were served in accordance with the *Act*.

### Preliminary and Procedural Matter

The landlord testified that in addition to the rent owed for July 2016, the Estate has subsequently not paid the rent for August 2016 and owe a late fee of \$25.00 for the months of July and August 2016. As a result, the landlord requested to amend the

application to include rent owed for August 2016 and late fees for July and August of 2016. I find that the request of the landlord is reasonable and does not prejudice the respondents as it is reasonable to conclude that given that the manufactured home continues to occupy the rental site and the Estate has stopped paying rent owing that the Estate would be aware that rent and late fees up to and including the date of the hearing would be requested by the landlord. Therefore, pursuant to section 57(3) of the Act I amend the landlord's application to include August 2016 unpaid rent and late fees for July and August of 2016.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the Act?
- Is the landlord entitled to a monetary order under the Act, and if so, in what amount?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on August 1, 2006. Monthly site rent was originally \$325.00 per month and due on the first day of each month. Each year, the monthly rent increased under the Act to the current amount of monthly site rent, \$428.50.

The agent confirmed service of the 10 Day Notice for Unpaid Rent or Utilities, (the "10 Day Notice"), which was posted to the tenants' door on July 4, 2016. The 10 Day Notice listed \$428.50 owing due July 1, 2016, and had an effective vacancy date of July 14, 2016. The agent stated the Estate paid the site rent for the months of May and June of 2016 and then stopped paying the site rent. The 10 Day Notice was not disputed and site rent remains owing for May and June of 2016 according to the agent.

The landlord's amended monetary claim is comprised as follows:

<b>ITEM DESCRIPTION</b>	<b>AMOUNT CLAIMED</b>
Item 1. Unpaid site rent for July 2016	\$428.50
Item 2. Late fee for July 2016 unpaid rent	\$25.00
Item 3. Unpaid site rent for August 2016	\$428.50
Item 4. Late fee for August 2016 unpaid rent	\$25.00
Item 5. Recovery of cost of the filing fee	\$100.00
<b>TOTAL</b>	<b>\$1,007.00</b>

Regarding items 1 and 3, the agent testified that after June 2016, the Estate did not pay any further site rent and as the manufactured home remains on the rental site, the Estate owes unpaid rent for July and August 2016 comprised of \$428.50 for each month.

Regarding items 2 and 4, the agent testified that the Estate owes late fees for July and August 2016 at \$25.00 per month as 3(a) of the tenancy agreement under the section "Rent" states that \$5.00 per day up to a maximum of \$25.00 per month late fee will be charged for all late payments of rent.

Regarding the landlord's request for an Order of Possession, the agent testified that a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 4, 2016 (the "10 Day Notice") was served by posting on the tenants' door on July 4, 2016 and that the Executor was still accepting mail at the rental unit until August 5, 2016. Section 90 of the *Act* states that documents posted to the door are deemed served three days later. The 10 Day Notice is deemed served July 7, 2016 and was not disputed. The effective vacancy date is listed as July 14, 2016. The agent testified that he would be willing to accept a two week Order of Possession instead of a two day Order of Possession. The agent testified that he was not aware that tenant H.S. was deceased at the time the 10 Day Notice was posted to the door of the manufactured home.

### Analysis

Based on the undisputed documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of Possession** – I find that site rent for the months of July and August of 2016 has not been paid, and that the 10 Day Notice was not disputed. The tenant is conclusively presumed pursuant to section 39 of the *Act*, to have accepted that the tenancy ended on the corrected effective vacancy date of the 10 Day Notice which automatically corrects under the *Act* from July 14, 2016 to July 17, 2016. Accordingly, I **grant** the landlord an Order of Possession **effective two (2) weeks after service on the Estate of the tenants.**

**Claim for unpaid site rent and late fees** – As indicated above, I find that site rent for July and August 2016 in the amount of \$428.50 for each month has not been paid. I also find that late fees of \$25.00 for both July and August of 2016 are also owed. Pursuant to section 20 of the *Act*, a tenant must pay site rent when it is due in accordance with the tenancy agreement.

Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that site rent is due monthly on the first of each month. The rental site continues to be occupied as a manufactured home remains on the rental site. The landlord will not regain possession of the unit until after service of the Order of Possession. I find the landlord has met the burden of proof for unpaid site rent for the months as claimed and the late fees as claimed.

As the landlord has succeeded with their application, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

Based on the above, I find the landlord has established a monetary claim of **\$1,007.00** as claimed which is comprised of \$428.50 for unpaid July 2016 site rent, \$428.50 for unpaid August 2016 site rent, two \$25.00 late fees, and the recovery of the \$100.00 filing fee.

**Monetary Order** – I grant the landlord a monetary order pursuant to section 60 of the *Act* in the amount of **\$1,007.00** as described above.

#### Conclusion

The landlord's application is fully successful.

The landlord has been granted an order of possession effective two (2) weeks after service on the Estate of the tenants. This order must be served on the Estate of the tenants and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted a monetary order under section 60 of the *Act* in the amount of \$1,007.00. This order must be served on the Estate of the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: August 24, 2016

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Residential Tenancy Branch