



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR, FF

### Introduction

This hearing dealt with the landlord's 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 pursuant to section 60; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 65.

Tenants WS and KB did not participate in the conference call hearing, which lasted approximately 10 minutes. The landlord's agent (the "landlord") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed she was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

The landlord testified that on August 11, 2016 she forwarded the landlord's application for dispute resolution via registered mail to each tenant. The landlord provided two Canada Post receipts and two tracking numbers as proof of service. Based on the testimony of the landlord and in accordance with sections 81 and 83 of the *Act*, I find that the tenants have been deemed served with the application August 16, 2016, the fifth day after its registered mailing.

### Issue(s) to be Decided

Is the landlord entitled to an order of possession for unpaid rent?

Is the landlord entitled to monetary order for unpaid rent?

Is the landlord authorized to recover the filing fee for this application from the tenants?

### Previous Hearing(s)

At the outset of the hearing, the landlord explained this tenancy was the subject of two previous Decisions issued by the Branch.

The first Decision sets out the party's mutual agreement, specifically that tenant WS will pay \$344.19 by March 2, 2016 and \$344.19 by April 2, 2016. The Arbitrator in this hearing issued the landlord a monetary order in the amount of \$688.38. The landlord testified that tenant WS did not honour this settlement, as tenant WS only paid \$300.00 on March 11, 2016. The landlord testified that this monetary order was not filed in court for enforcement. For ease of reference, the file number for this hearing is set out on the front page of this Decision.

The second hearing addressed the non-payment of rent for April, May and June of 2016 along with five monthly late fees in the amount of \$25.00 each. The Arbitrator in this hearing issued a two day order of possession and monetary order in the amount of \$1,287.51. The file number for this hearing is also set out on the front page of this Decision.

Upon receipt of the last monetary order and order of possession the landlord attempted to file the orders in court. The landlord discovered the title on the manufactured home is a variation of the issued orders and therefore seeks to have the name on all orders corrected. Additionally the landlord discovered another individual, tenant KB, was listed on title and seeks to have this individual's name added to all orders.

As the landlord has applied naming the tenant and another tenant with a new style of cause, I find I am not bound by either of the two earlier Decisions.

### Background and Evidence

As per the submitted tenancy agreement and testimony of the landlord, the tenancy began on December 1, 2004 on a month-to-month basis. Rent in the amount of \$354.12 is payable on the first of each month. Tenant WS continues to reside in the rental unit.

A 10 Day Notice to End Tenancy for Unpaid Rent or Utilities ("10 Day Notice") was issued to tenant WS on August 30, 2016 by way of posting to the rental unit door where tenant WS resides. The notice indicates an effective move-out-date of September 13, 2016. In accordance with sections 81 and 83 of the *Act*, I find that tenant WS was served with the landlord's 10 Day Notice on September 2, 2016, three days after its posting.

The landlord seeks a monetary order in the amount of \$1,477.53. Specifically the landlord seeks \$300.00 for unpaid rent from July 2015 to September 2015, \$344.19 for

unpaid rent for April 2016, \$708.34 in unpaid rent from May 2016 to June 2016 and \$125.00 in late fees for five late fees valued at \$25.00 each.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenant.

### Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for unpaid rent or utilities the tenant may, within five days, pay the overdue rent or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does not pay the overdue rent or file an application, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice and must move out of the rental unit.

Based on the landlord's testimony and the notice before me, I find that tenant WS was served with an effective notice. As the tenant did not pay the overdue rent or file an application to dispute the notice within five days, tenant WS is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, and must move out of the unit. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

Section 26 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which is the first day of each month. Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, *Regulation* or tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply.

I find that the landlord proved that previous rent for this unit was \$344.19 and current rent for this unit is \$354.17. I find the landlord provided undisputed evidence that tenant WS failed to pay full rent from July 2015 to June 2016. Therefore, I find that the landlord is entitled to \$1,352.53 in rent.

Section 7 of the *Regulation* establishes that a landlord may charge an administration fee of \$25.00 of late payment of rent if the tenancy agreement provides for that fee. Based on the tenancy agreement before me, I find the landlord is entitled to recover \$125.00 in late fees.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$1,577.53.

Conclusion

I grant an order of possession to the landlord effective **two (2) days after service on the tenant.**

I issue a monetary order in the landlord's favour in the amount of \$1,577.53.

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 09, 2016

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Residential Tenancy Branch