



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR, MNR & FF

### Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession for non-payment of rent
- b. A monetary order in the sum of \$660.75 for unpaid rent
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

### Preliminary Matter:

The tenant passed away on June 12, 2016. The personal representative is her common law spouse who co-habited in the rental unit with her. The original Application for Dispute Resolution identified the deceased tenant as the respondent as the landlord did not know who the personal representative was.

Policy Guideline #12 includes the following:

#### **10. SERVICE OF DOCUMENTS ON A DECEASED PERSON**

Where a party to an application for dispute resolution is deceased, the personal representative of the deceased's estate should be named. If the deceased is a respondent to an application, the personal representative should be named and served. If the applicant does not know the name of the deceased's personal representative at the time of filing an application for dispute resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased). At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.

The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.

Policy Guideline #43 includes the following:

#### **D. NAMING AN ESTATE OF A PERSON WHO HAS DIED**

Where a party to an Application for Dispute Resolution is deceased, the personal representative of the deceased's estate must be named. If the deceased is a respondent to an application, the personal representative must be named and served. If the applicant does not know the name of the deceased's personal representative at the time of filing an Application for Dispute Resolution, the deceased's name can be filled in on the application (e.g. John Doe, deceased).

At the hearing, the arbitrator may amend the application to reflect the proper name of the estate.

The personal representative may be the person named as executor in the deceased's will, or the person who has been approved by the court to administer the estate by way of an estate grant.

The proper manner of naming the estate is as follows: John Smith, Personal Representative of the Estate of Mary Jones, Deceased.

At the hearing the common law spouse MEW stated her was the personal representative of the Estate of the deceased and consented to being added as a party acting as the personal representative of the Tenant.. I ordered that the style of cause be amended to identify the respondent as MJW, Personal Representative of the Estate of PAW, Deceased.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Notice to End Tenancy was served on the personal representative of the Tenant on September 17, 2016 who was an adult person residing in the rental unit. Further I find that the Application for Dispute Resolution/Notice of Hearing was served by mailing, by registered mail to the common law spouse of the deceased and to the estate on October 13, 2016. With respect to each of the applicant's claims I find as follows:

#### Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to an Order for Possession?

- b. Whether the landlord is entitled to A Monetary Order and if so how much?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The landlord and the tenant entered into a written tenancy agreement that provided that the tenancy would start on January 5, 2007. The present rent is \$220.25 per month payable on the first day of each month. The Estate failed to pay the rent for the months of August, September, October, November and December 2016 and the sum of \$1101.25 remains owing. The personal representative of the Estate continues to live in the rental unit.

Analysis - Order of Possession:

I determined the landlord was entitled to an Order for Possession. There is outstanding rent. The Tenant(s) have not made an application to set aside the Notice to End Tenancy and the time to do so has expired. In such situations the Residential Tenancy Act provides the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date. Accordingly, I granted the landlord an Order for Possession effective December 31, 2016.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

Analysis - Monetary Order and Cost of Filing fee:

I determined the tenant has failed to pay the rent for the month(s) of August, September, October, November and December 2016 and the sum of \$1101.25 remains owing. I granted the landlord a monetary order in the sum of \$1101.25 plus the sum of \$100 in respect of the filing fee for a total of \$1201.25

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Settlement:

At the hearing the parties reached as settlement and they asked that I record the settlement pursuant to section 63(2) of the Residential Tenancy Act as follows:

- a. The parties acknowledge the sum of \$1101.25 is owed in rent for the months of August, September, October, November and December 2016.
- b. The parties consent to an Order for Possession effective December 31, 2016.
- c. The landlord agrees that provided reasonable efforts have been made to sell the rental unit the landlord shall not enforce the Order for Possession and shall permit the rental unit to remain on site for January 2017 on a license to occupy basis. Reasonable efforts requires the personal representative to do the following:
  - Ensure the yard is clean and garbage removed
  - Place the interior of the mobile home in a habitable condition
  - Listing the mobile home for sale and providing the landlord with a summary of the efforts made to sell the mobile home.
  - The payment of a license to occupy fee of \$220.25 for January 2017
- d. The parties further agree that if the manufactured home is not sold by the end of January the landlord has the right to enforce the Order for Possession or enter into another arrangement with the personal representative on a license to occupy basis.

Conclusion:

I granted an Order for Possession effective December 31, 2016. I granted a monetary order in the sum of \$1201.25 for rent for August to December 2016 and the cost of the filing fee..

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*, SBC 2002, c. 77.

Dated: November 29, 2016

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Residential Tenancy Branch