



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNR FF

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) under the *Manufactured Home Park Tenancy Act* (the “Act”) by the landlord for a monetary order for unpaid site rent and to recover the cost of the filing fee. The landlord’s Application also includes a monetary claim for late fees pursuant to the tenancy agreement.

The landlord appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”), Application and documentary evidence were considered. The landlord testified that the tenant was served with a package that included the Notice of Hearing, Application and documentary evidence on December 22, 2016 via registered mail addressed to the tenant at the mailing address provided by the tenant in reference to a previous dispute resolution hearing, the file number of which and the registered mail tracking number of which, have both been included on the cover page of this decision for ease of reference. According to the landlord, the tenant’s manufactured home continues to occupy the rental site. Documents served by registered mail are deemed served five days after they are mailed pursuant to section 83 of the *Act*. Based on the above, I am satisfied that the tenant was deemed served with the Notice of Hearing, Application and the documentary evidence as of December 27, 2016.

### Preliminary and Procedural Matter

At the outset of the hearing, the landlord confirmed that her Application did not include a request for an order of possession and that she is not seeking an order of possession currently. Given the above, I note that landlord is at liberty to apply for an order of possession should the need arise.

### Issue to be Decided

- 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. Originally site rent was \$274.00 per month and due on the first day of each month. The landlord stated that during the tenancy, the monthly site rent increased under the *Act* to the current monthly site rent amount of \$330.00 which was increased from \$322.00 before the last rent increase which came into effect as of December 1, 2016.

The landlord confirmed service of the 10 Day Notice for Unpaid Rent or Utilities dated November 14, 2016 (the "10 Day Notice") which the landlord affirmed was posted to the tenant's door on November 14, 2016. The 10 Day Notice listed \$322.00 was owed as of November 1, 2016, and had an effective vacancy date of November 24, 2016.

According to the landlord, the manufactured home continues to occupy the rental site.

The landlord confirmed upon reviewing the monetary claim during the hearing that she made a minor adding error and as a result her total monetary claim was \$10.00 less for a total of \$1,157.00 as follows:

ITEM DESCRIPTION	AMOUNT CLAIMED
1. Unpaid site rent for November 2016	\$322.00
2. Late charge for November 2016	\$25.00
3. Loss of site rent for December 2016	\$330.00
4. Late charge for December 2016	\$25.00
5. Loss of site rent for January 2017	\$330.00
6. Late charge for January 2017	\$25.00
7. Recovery of cost of filing fee	\$100.00

<b>TOTAL</b>	<b>\$1,157.00</b>
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Regarding items 1, 3 and 5, the landlord testified that the tenant failed to pay any site rent for November 2016 even after having been served with the 10 Day Notice which was not disputed by the tenant. For the month of November 2016, the landlord affirmed that she is owed \$322.00 in site rent, plus loss of December 2016 and January 2017 site rent of \$330.00 for each of those months as the manufactured home remains on the rental site.

Regarding items 2, 4, and 6, the landlord referred to the tenancy agreement which indicates that \$3.00 per day will be charged per day for all late payments of site rent, which the landlord affirmed understanding that there is a maximum amount of \$25.00 per month under the *Act* for monthly late fees as long as there is a specific term on the tenancy agreement.

Item 7, the filing fee will be addressed later in this decision.

The landlord submitted a copy of the tenancy agreement, monetary order worksheet, registered mail receipts, 10 Day Notice and the park rules in evidence.

### 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.

**Claim for unpaid site rent, loss of site rent, and late fees/charges** – I accept the undisputed testimony of the landlord that the tenant failed to pay any site rent for the month of November 2016. 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 tenant has 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. As a result, I find the tenant owes November 2016 site rent in the amount of \$322.00 plus the late fee of \$25.00 for the month of November 2016.

As the 10 Day Notice was not disputed by the tenant, however, I find the tenancy ended 10 days after the 10 Day Notice was deemed served. Documents served by posting to the tenant's door are deemed served three days after they are posted. As a result, I find the 10 Day Notice posted on November 14, 2016 was deemed served on November 17,

2016. As a result, and pursuant to section 46 of the *Act* which states that incorrect effective dates are automatically corrected under the *Act*, I find that the corrected effective vacancy date was November 27, 2016 and that the tenant continues to over-hold the rental site by failing to vacate the rental site. Given the above, I find the tenancy ended on November 27, 2016.

As a result, of the above, I find the landlord has met the burden of proof for loss of site rent for the months of December 2016 and January 2017 but I do not grant the late fee for either month as the tenancy ended on November 27, 2016.

Based on the above, I find the landlord has established a total monetary claim of **\$1,007.00** comprised of unpaid site rent of \$322.00 for November 2016, loss of site rent of \$330.00 for each of the months of December 2016 and January 2016, and the late fee of \$25.00 for November 2016 only. I dismiss the late fees for December 2016 and January 2017 as the tenancy ended on November 27, 2016.

As the landlord has succeeded with a majority of their application, I grant the landlord 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 **\$1,107.00** as described above.

### Conclusion

The landlord's claim is mostly successful. The tenancy ended on November 27, 2016 and the tenant has been over-holding the rental site since that date. The landlord, however, has not requested an order of possession. The landlord is at liberty to apply for an order of possession, if necessary.

The landlord has been granted a monetary order under section 60 of the *Act* in the amount of \$1,107.00. This order must be served on the tenant 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: January 23, 2017

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Residential Tenancy Branch