



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RETIRE WEST COMMUNITIES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNR, FF

### Introduction

This was the landlord's application under the *Manufactured Home Park Tenancy Act* (the "Act") for an order of possession for unpaid rent, a monetary order for unpaid rent, and authorization to recover the filing fee for this application.

The tenant did not attend the hearing. The landlord's agent attended and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As the tenant did not attend the hearing, service of the landlord's application and the notice of hearing were considered. The landlord's agent provided affirmed testimony that he sent these materials and associated evidence on January 5, 2017 by registered mail to the rental site address. He provided a Canada Post Registered Mail tracking number. He stated that he also posted a copy of the materials on the tenant's door on the same day. In accordance with sections 82 and 83 of the Act, the tenant is deemed to have been served with the landlord's application materials, including the notice of hearing, on January 10, 2017, five days after they were sent by registered mail.

The agent further testified that approximately the day before he left the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on the tenant's door, he called the police to have them check on the tenant, who had not been responsive to the landlord's attempts to contact him for some time. The police attended the rental site on or about December 12, 2016, and the tenant answered his door for them. However, the tenant did not answer when the landlord's agent knocked, and so on the following day, December 13, 2016, the agent served the 10 Day Notice by posting it on the tenant's door. A Proof of Service document signed by a witness was in evidence in support of this. In accordance with sections 81 and 83 of the Act, the tenant is deemed to have been served with 10 Day Notice on December 16, 2016, three days after it was posted on his door.

The landlord amended the application during the hearing to add a claim for outstanding January rent and I accepted the request to amend as per Rule 4.2 of the Rules of Procedure, as a tenant can reasonably anticipate the amount owing for rent will increase after the date of the application.

### Issues to be Decided

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

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

According to the written tenancy agreement in evidence and the agent's affirmed and undisputed evidence, this tenancy began on October 1, 1997 and is a month to month tenancy. The current monthly rent is \$330.00 payable on the first day of each month. A Notice of Rent Increase confirming this amount was in evidence. The tenancy agreement is between a prior corporation and the tenant. The landlord's agent advised that the current corporate landlord purchased the prior corporation.

The landlord's agent further testified that the tenant has not paid rent in the last six months. The tenant failed to either dispute the notice or pay the full rent owing within five days of being served.

The landlord submitted a spreadsheet recording the tenant's rental payments from May, 2015 to present. According to that spreadsheet, the tenant failed to pay rent on both January and February 1<sup>st</sup> of 2016, but made up those arrears in March. He again failed to pay rent in both April and May but made up the arrears in June. He has not paid rent for August, 2016 – present.

The landlord's agent further testified that the tenant works or used to work in the bush, and was sometimes not present to pay rent when due, but that the tenant is clearly at home now, based on the police visit. He also stated that the tenant's car is also there, although it does not appear to have moved and that the tenant is not responsive to his neighbours.

Also in evidence were letters from the landlord to the tenant from August, October, and November of 2016 informing the tenant of the outstanding amount, stating that a late charge of \$25.00 is also payable, and stating: "This rent payment owed is a material term of the tenancy."

The landlord's agent advised that he was going to contact the police and/or social services if the tenant remained unresponsive to him and the neighbours.

### Analysis

The landlord provided undisputed evidence at this hearing, as the tenant did not attend. Based on the evidence before me, I find that the tenant failed to pay the rent due within five days of being served the 10 Day Notice. The tenant has not made an application pursuant to s. 39 of the Act within five days of receipt of the 10 Day Notice.

In accordance with s. 39(5) of the Act, the failure of the tenant to take either of the above actions within five days led to the end of this tenancy on December 26, 2016, the corrected effective date on the 10 Day Notice. The tenant and anyone on the premises were required to vacate the premises by that date. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession, pursuant to s. 48(2) of the Act. I find that the landlord's 10 Day Notice complies with s. 45.

The landlord provided undisputed evidence that the tenant has failed to pay rent of \$330.00 from August 1, 2016 to present. The landlord's application, dated December 29, 2016, seeks \$1,650.00 (five months) in unpaid rent. Rent for January, 2017 is now also owing. Therefore, I find that the landlord is entitled to \$1,980.00 in rental arrears for the above period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee.

The landlord did not claim late fees on the application. Accordingly, I decline to award late fees.

### Conclusion

The landlord's application is allowed.

I grant an order of possession to the landlord effective **two (2) days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this order, it may be filed and enforced as an order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of **\$2,080.00** against the tenant. The tenant must be served with this order as soon as possible. Should the tenant fail to comply with this monetary order, it may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act and is final and binding unless otherwise indicated in the Act.

Dated: January 25, 2017

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Residential Tenancy Branch