



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GEN ENTERPRISES LTD.  
and [tenant name suppressed to protect privacy]

## **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 pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was represented by the owner and the property manager of the park. The property manager BB (the "landlord") primarily spoke on behalf of the corporate landlord.

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 10 Day Notice, the landlord's application for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 81 and 82 of the *Act*, I find that the tenant was duly served with the landlord's 10 Day Notice and application for dispute resolution and the parties were served with their respective evidence.

At the outset of the hearing, the landlord testified that he had erroneously indicated this application is being made under the Residential Tenancy Act on the initial application for dispute resolution. Pursuant to my power to amend an application under section 57(3) of the *Act*, I amend the landlord's application for dispute resolution to make this application under the appropriate *Act*.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to monetary compensation for unpaid rent?

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

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspects of the claims and my findings are set out below.

The parties agreed on the following facts. The landlord took over this tenancy agreement from the previous landlord in June, 2015 when the landlord purchased the manufactured home park. The monthly rent is \$542.00 if pre-paid, and \$558.00 if paid on the first of the month. A \$25.00 late charge is applied on late rent payments. A \$25.00 NSF fee is charged on dishonoured cheques. The landlord testified that the tenant owes the full rent for the months of February to May, 2017.

The tenant testified that she has been residing at the rental address since October, 2012. The tenant said that throughout her tenancy she has paid her rent at various times by cash, money order and postdated cheques. The tenant said that the landlord has never provided her with receipts regardless of the method of payment. The tenant provided the landlord with postdated cheques for a full year in June, 2016. She said that in late 2016 she cashed out a portion of her pension. The tenant testified that she used these funds to pay the property manager the total amount of \$6,760.00 for future rent, in two cash payments in December, 2016 and January, 2017. The tenant said that she was not provided with a receipt for either of the payments. The tenant was unable to recall what amount was paid in each installment. The tenant requested the landlord return the postdated cheques she had issued in June, 2016 and when they were not returned to her she cancelled them. The tenant submitted into written evidence a copy of her bank statement as evidence of the transactions she made.

The landlord testified that it is the customary practice to issue receipts when payments are provided by tenants in cash or money orders. The landlord said that the tenant did not provide any cash payment in December, 2016 or January, 2017. The landlord said that since the tenant cancelled her postdated cheques the tenancy is in arrears for February, March, April and May, 2017 in the amount of \$2,168.00. In addition the tenant is charged \$50.00 for two NSF cheques and a late fee of \$25.00 has been applied for the months of February, March and April, 2017 for a total of \$75.00. The landlord testified that the total arrears for this tenancy as of May 17, 2017, the date of the hearing is \$2,293.00.

### Analysis

Given the conflicting testimony regarding payment of the monthly rent I first turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanor as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

Considered in its totality, I find the evidence presented by the landlord more credible than that of the tenant. I do not find it credible that the tenant would provide a lump sum of cash with no receipt from the landlord, with the expectation that they have successfully paid the monthly rent for the upcoming year. The tenant testified that she made two payments but was unable to recall what amount was paid in each installment. The tenant said that she paid a total amount of \$6,760.00 for the year, but this amount does not correspond to the annual rent calculated at either the \$542.00 or \$558.00 rent amount. The tenant was unable to provide an explanation of how this figure was calculated or why this amount was allegedly paid. The tenant submitted into written evidence a copy of her bank statement showing a number of cash withdrawals made in December, 2016 and January, 2017. The tenant said that the cash withdrawals are evidence to support that she paid the landlord the lump sum rent. I find that evidence of withdrawals is insufficient evidence that rent was paid. Withdrawals could be made for any number of reasons. Furthermore, the bank statement shows six cash withdrawals made throughout December and January. If the tenant was making a withdrawal with the intention of making a lump sum payment to the landlord it would be reasonable to expect that a withdrawal would have been made at one time. I do not find the bank statement to be evidence that the tenant made rent payment to the landlord. Based on the testimony and the written evidence I do not find that rent has been paid since February, 2017 for this tenancy.

I find the landlord's version of events that the tenant has failed to pay the rent since February, 2017 to be more credible.

In accordance with subsection 39(5) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving the 10 Day Notice. In this case, the tenant confirmed she received the 10 Day Notice in early April, 2017 when it was posted on her rental unit door. I accept the landlord's evidence that the tenants failed to pay the full rent due within the 5 days of service granted under section 39(4) of the *Act* nor did the tenant dispute the 10 Day Notice within that 5 day period. Accordingly, I find that the tenant is conclusively presumed under section 39 (5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, April 13, 2017. Therefore, I find that the landlord is entitled to an Order of Possession, pursuant to section 48 of the *Act*.

I accept the landlord's evidence that the total amount of arrears for this tenancy is \$2,293.00. I issue a monetary award for unpaid rent and fees owing of \$2,293.00 as at May 17, 2017, the date of the hearing, pursuant to section 60 of the *Act*.

As the landlord's application was successful, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

### Conclusion

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order 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 \$2,393.00, under the following terms:

Rental Arrears for February 2017	\$542.00
Rental Arrears for March 2017	\$542.00
Rental Arrears for April 2017	\$542.00
Rental Arrears for May 2017	\$542.00
Late Fees	\$75.00
NSF Fees	\$50.00
Recovery of Filing Fee	\$100.00
<b>Total Monetary Award</b>	<b>\$2,393.00</b>

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, this Order 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 Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 17, 2017

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Residential Tenancy Branch