



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MIRAE INVESTMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Introduction**

This hearing dealt with an Application for Dispute Resolution that was filed under the Manufactured Home Park Tenancy Act (the “Act”), for a Monetary Order for unpaid rent and for an Order of Possession.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”) who provided affirmed testimony. The Tenants did not attend. The Agent was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondents must be served with a copy of the Application and Notice of Hearing. As the Tenants did not attend the hearing, I confirmed service of documents as explained below.

The Agent testified that copies of the Application and the Notice of Hearing were sent individually to each of the Tenants on August 4, 2017, by registered mail and provided a copy of the registered mail receipts in the evidence before me. As a result, I find that the Tenants were duly served the Application and the Notice of Hearing on August 9, 2017, five days after the registered mailing.

I have reviewed all evidence and testimony before me; however, I refer only to the relevant facts and issues in this decision.

### **Preliminary matters**

In the hearing the Agent provided affirmed and undisputed testimony that the Tenants continue to occupy the rental pad in the Manufactured Home Park, and requested to amend the application to include loss of rent for August, 2017. The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state under section 4.2, that the Application may be amended at the hearing in circumstances that can

reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made. As a result, the Agent's request to amend the application to include the loss of rent for August, 2017 is granted.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 39 and 48 of the *Act*?

Is the landlord entitled to monetary compensation for unpaid rent pursuant to section 60 of the *Act*?

### Background and Evidence

The Agent testified that the month to month tenancy began on July 1, 2011, and that rent was due on the first of each month. The Agent testified that at the start of the tenancy, pad rent is \$345 per month, and that two rent increases have taken place since the start of the Tenancy. The Agent stated that as of February 1, 2017, the monthly rent for the pad occupied by the Tenants' mobile home is \$362.50.

The Agent submitted a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) in the amount of \$3,897.50, dated June 6, 2017. The 10 Day Notice has an effective vacancy date of June 27, 2017, and indicates that it was served on the Tenant on June 6, 2017, by attaching a copy to the Tenant's door. The Landlord submitted a witnessed and signed Proof of Service of the 10 Day Notice (the "Proof of Service") indicating that the 10 Day Notice was attached to the Tenant's door on June 6, 2017, at 3:45 pm.

The Agent provided a ledger in the documentary evidence before me showing that outstanding rent is owed in the amount of \$4,522.50 for August 1, 2016, - August 1, 2017.

### Analysis

Section 39(1) of the *Act* outlines the grounds on which to issue a Notice to End Tenancy for non-payment of rent:

**Landlord's notice: non-payment of rent**

**39 (1)** A landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

However, section 39(5) of the *Act* also states:

**Landlord's notice: non-payment of rent**

**39 (5)** If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the manufactured home site to which the notice relates by that date.

I have reviewed all relevant documentary evidence and oral testimony and in accordance with sections 88 and 90 of the *Act*, I find that the Tenants received the 10 Day Notice on June 9, 2017, three days after it was attached to their door.

I also find that the Tenants were obligated to pay the monthly rent on time and in full each month.

Based on the tenancy agreement, the Agent's affirmed and undisputed oral testimony, and the documentary evidence before me, I find that the Tenants owe \$4,522.50 in outstanding rent. As there is no evidence before me to the contrary, I find that the Tenants have failed to pay the rent owed in full as outlined above within the five days granted under section 46(4) of the *Act* and did not dispute the 10 Day Notice within that five day period.

Based on the foregoing, I find that the Tenants are conclusively presumed under section 39(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, June 27, 2017.

Conclusion

Pursuant to section 48 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenants. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 65 of the *Act*, I authorize and order the Tenants to pay the Landlord \$100.00 for the recovery of the filing fee.

Pursuant to section 60 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$4,622.50; \$4,522.50 for rent owed for August, 2016 - August, 2017, and \$100.00 for the recovery of the filing fee. The Landlord is provided with this Order in the above terms and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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 *Manufactured Home Park Tenancy Act*.

Dated: September 1, 2017

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Residential Tenancy Branch