



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes

OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Landlord under the *Manufactured Home Park Tenancy Act*, for an Order of Possession for unpaid rent.

The hearing was convened by telephone conference call and was attended by the Landlord, who provided affirmed testimony. The Tenant did not attend. The Landlord 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 respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of documents as explained below.

The Landlord testified that the Application for Dispute Resolution and the Notice of Hearing were sent to the Tenant on August 10, 2017, by registered mail and provided a copy of the registered mail receipt in the evidence before me. As a result, I find that the Tenant was duly served on August 15, 2017, five days after the registered mailing.

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

### Preliminary matters

During the hearing the Landlord testified that they own the subject manufactured home, which the Tenant rents from them. The Landlord testified that as the owner of the manufactured home, they pay the pad rental fee for the manufactured home site and the Tenant pays for the rental of the actual manufactured home. As a result, I find that the Tenancy falls under the *Residential Tenancy Act*, and not the *Manufactured Home Park Tenancy Act*, and the Application is amended to reflect that the Landlord is seeking an Order of Possession for the non-payment of rent under the *Residential Tenancy Act* (the “Act”),

At the outset of the hearing two other attendees were also present with the Landlord, who are not parties to the proceeding. The Landlord testified that they are their adult children and that they witnessed many of the dealings regarding this Tenancy. As the other Attendees are not parties to the proceeding, I requested that they leave the room until called on to provide any relevant witness testimony. However, the witnesses were not recalled to provide any testimony in the hearing.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 46 and 55 of the *Act*?

#### Background and Evidence

The Landlord provided testimony in the hearing that an oral tenancy agreement existed between the Tenant and the Landlord as follows. The Tenant, who is the Landlord's son, moved into the rental unit on September 28, 2016, under the agreement that they could live there for free while attending school. The Landlord testified that the parties agreed that the Tenant would also make repairs and improvements to the home in preparation for sale, and would receive any profits from the sale as compensation for any repairs or improvements completed.

The Landlord stated that in March, 2017, the Tenant was no longer attending school and an oral agreement was reached between the parties on March 27, 2017, that starting April 1, 2017, the Tenant would pay monthly rent in the amount of \$375.00 on the first day of each month, as well as a \$187.50 security deposit. The Landlord provided in the documentary evidence before me, a copy of a Shelter Information Form from the Ministry of Social Development and Social Innovation which is signed by both parties, and matches the conditions of the Tenancy agreement as noted above.

The Landlord testified that as of today's date, neither the security deposit nor any rent has been paid by the Tenant and therefore a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was served on the Tenant on June 27, 2017, for the non-payment of April 2017 rent.

The Landlord submitted in the documentary evidence before me, a copy of the 10 Day Notice dated June 27, 2017, indicating an outstanding rent amount of \$375.00, due on April 1, 2017. The 10 Day Notice has an effective vacancy date of July 6, 2017, and indicates that it was served on the Tenant on June 27, 2017, by mail. The Landlord testified that on July 27, 2017, they sent the 10 Day Notice to the Tenant at the rental address by registered mail and provided in the evidence before me, a copy of the registered mail receipt.

The 10 Day Notice states that the Tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end.

In the hearing the Landlord acknowledged that the 10 Day Notice was not served promptly on the Tenant after their failure to pay rent on April 1, 2017. However, the Landlord also testified that they delayed the issuance of the 10 Day Notice in the hopes that this matter could be resolved peaceably with the Tenant. The Landlord testified that the Tenant continues to reside in the rental unit, that the Tenant has not paid either the security deposit or any amount towards rent since entering into the tenancy agreement on May 27, 2017, and that as of the date of the hearing, the Tenant owes \$2,250.00 in rent; \$375.00 per month for April-September, 2017.

### Analysis

Section 46 (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**

**46** (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 46(4) and 46(5) of the *Act* also state:

**46** (4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

(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 rental unit 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 Tenant was served with the 10 Day Notice on July 30, 2017, five days after the registered mailing.

I also find that effective April 1, 2017, the Tenant was obligated to pay rent on the first of each month, in the amount of \$375.00.

Based on the Landlord's affirmed and undisputed oral testimony, and the documentary evidence before me, I find that at the time the 10 Day Notice was issued, the Tenant owed rent to the Landlord in an amount of not less than \$375.00. As there is no evidence before me to the

contrary, I find that the Tenant has 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 Tenant is conclusively presumed under section 46(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, June 9, 2017.

Therefore, I find that the Landlord is entitled to an Order of Possession for unpaid rent.

### Conclusion

Pursuant to section 55 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and 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 Supreme Court of British Columbia 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: September 12, 2017

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Residential Tenancy Branch