



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, OPR, FF, MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlords under the *Manufactured Home Park Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and the recovery of the filing fee, an Order of Possession, and the retention of the Tenant’s security deposit to offset any Monetary Orders issued to the Landlords.

The hearing was convened by telephone conference call and was attended by the Landlords, and the Tenant, all of whom provided affirmed testimony. All parties were 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 and I confirmed service of these documents as explained below.

The Landlords testified that the Application and the Notice of Hearing were personally served on the Tenant on August 1, 2017, and the Tenant acknowledged receipt of these documents on that date. As a result, I find that the Tenant was duly served on August 1, 2017, the day the documents were personally served on them.

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

### 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 and the recovery of the filing fee pursuant to sections 60 and 65 of the *Act*?

### Background and Evidence

In the hearing the Landlords testified that they entered into a month-to-month tenancy with the Tenant several years prior. The Landlords were uncertain of the exact date the tenancy began; however, the Tenant testified that they believed it was approximately 4 years ago. The Landlords testified that the monthly pad rent was \$170.00, due on the first day of the month and that a security deposit in the amount of \$85.00 was paid by the Tenant at the start of the tenancy, which they still hold. The Landlords also testified that the tenancy agreement allows them to charge a \$25.00 late fee each month a rent payment is late. In the hearing the tenant agreed that these are the correct terms of the tenancy agreement.

In the hearing the parties agreed that the Tenant did not pay the rent as required and that as a result, a Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was issued.

The Landlord submitted a copy of the 10 Day Notice dated May 31, 2017, which indicates that as of June 1, 2017, the Tenant owed \$790.00 in outstanding rent. The 10 Day Notice has an effective vacancy date of June 10, 2017, and in the hearing the parties agreed that the Tenant was personally served with the 10 Day Notice on June 1, 2017.

In the hearing the parties agreed that the Tenant has not made any rent payments since the 10 Day Notice was issued and that as of July 1, 2017, the Tenant owes \$1,010.00 in outstanding rent and late fees.

In the hearing the Tenant testified that due to the recent evacuation orders and forest fires, they have been unable to work and therefore unable to pay the rent. The Tenant testified that they are sometimes behind on the rent, but that they try to make up for it by making lump sum payments when they have the money. The Tenant also acknowledged that they did not dispute the 10 Day Notice.

### Analysis

Section 20 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of the rent. When a Tenant does not pay rent when due, section 39(4) of the *Act* permits a Landlord to end the tenancy by issuing a notice to end tenancy. A Tenant who receives a notice to end tenancy under this section has five days after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a Tenant does not pay rent in full or dispute the notice, the Tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice.

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 38 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 39(5) of the *Act* to have accepted that the tenancy ended on the effective date of the 10 Day Notice, June 10, 2017, and the Landlords are therefore entitled to an Order of Possession.

Although the Tenant provided a reason in the hearing for why they were unable to pay the rent, I do not find that the reason they provided constitutes a right under the *Act* to deduct all or a portion of the rent. However, based on the oral testimony before me, the Landlords collected a security deposit in the amount of \$85.00 contrary to section 17 of the *Act*, which the Tenant is entitled to deduct from the rent owed.

Section 17 of the *Act* states that a Landlord must not require or accept a security deposit in respect of a manufactured home site tenancy. It also states that if a Landlord accepts a security deposit, the Tenant may deduct the security deposit from the rent or otherwise recover the amount.

Based on the foregoing, I find that as of July 1, 2017, the Tenant owes \$925.00 in outstanding rent and fees; \$1,010.00 in rent and fees, less the \$85.00 the Tenant is eligible to deduct in accordance with section 17 of the *Act*.

Pursuant to sections 60 and 65 of the *Act*, the Landlords are entitled to a Monetary Order in the amount of \$1,025.00; \$925.00 for back owed rent and fees, and \$100.00 for the recovery of the filing fee.

Conclusion

Pursuant to section 48 of the *Act*, I grant an Order of Possession to the Landlords effective **two days after service of this Order** on the Tenant. The Landlords are 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.

Pursuant to section 60 of the *Act*, I grant the Landlords a Monetary Order in the amount of \$1,025.00. The Landlords are 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 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: September 19, 2017

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Residential Tenancy Branch