



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## 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 sections 39 and 48;
- a monetary order for unpaid rent pursuant to section 60; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 65.

The tenant did not attend this hearing, although I waited until 11:13 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 11:00 a.m. An agent of the landlord W.L. (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The landlord testified that the Landlord's Application for Dispute Resolution (the Application) and evidentiary package was sent to the tenant by way of registered mail on September 06, 2017. The landlord provided a copy of the Canada Post Tracking Number to confirm this registered mailing. In accordance with sections 81, 82 and 83 of the *Act*, I find that the tenant was deemed served with the Application and evidentiary package on September 11, 2017, the fifth day after its registered mailing.

The landlord entered into evidence a signed and witnessed Proof of Service Document attesting to the fact that a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) was personally handed to the tenant at 8:10 p.m. on May 12, 2017. In accordance with section 81 of the *Act* I find that the 10 Day Notice, identifying \$4,170.00 in rent owing for this tenancy, was duly served to the tenant.

At the outset of the hearing the landlord sought to increase their monetary claim from \$4,990.00 to \$5,810.00 to reflect the tenant's failure to pay \$410.00 in monthly rent for September 2017 and October 2017, the additional months of unpaid rent waiting for this hearing. Residential Tenancy Rule of Procedure 4.2 states that 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, the application may be amended at the hearing. I allow the amendment as this was clearly rent that the tenant would have known about and resulted since the landlord submitted their Application for Dispute Resolution.

#### Issues(s) 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 from the tenant?

#### Background and Evidence

The landlord gave undisputed affirmed testimony that this tenancy began sometime before 2007, the year when the current landlord began to manage the rental unit. The landlord testified that the current monthly rent is \$410.00, due on the first day of the month.

A tenant ledger showing the rent owing and paid during this tenancy was included in the landlord's evidence. The tenant ledger shows that the monthly rent was \$400.00 until December 2017. In January of 2017 the monthly rent was increased to \$410.00.

A copy of the signed 10 Day Notice, dated May 13, 2017, with an effective date of May 23, 2017, was also included in the landlord's evidence.

Section 61 of the *Act* allows for the 10 Day Notice to be amended when it is reasonable to do so. I find that the date of the 10 Day Notice is for a date in the future that had not occurred at the time that the 10 Day Notice was issued to the tenant, although the Notice was given to the tenant for rent owing in the month that it was received. For this reason, I have amended the date of the 10 Day Notice to reflect the day it was witnessed being given to the tenant, May 12, 2017.

The landlord testified that the tenant is still in the possession of the rental site and that the tenant paid \$410.00 towards the total rent owed on June 05, 2017. The landlord testified that a receipt was issued to the tenant for this payment which indicated “temporary occupancy only” on it.

The landlord’s amended application for a monetary award of \$5,810.00 is for the following items:

<b>Item</b>	<b>Amount</b>
Late Rent Fees – March, April 2016	\$50.00
Unpaid May 2016 Rent	400.00
Unpaid June 2016 Rent	400.00
Unpaid July 2016 Rent	400.00
Unpaid August 2016 Rent	400.00
Late Rent Fees – May, June, July, August 2016	100.00
Unpaid September 2016 Rent	400.00
Unpaid October 2016 Rent	400.00
Unpaid November 2016 Rent	400.00
Unpaid December 2016 Rent	400.00
Unpaid January 2017 Rent	410.00
Unpaid April 2017 Rent	410.00
Unpaid July 2017 Rent	410.00
Unpaid August 2017 Rent	410.00
Unpaid September 2017 Rent	410.00
Unpaid October 2017 Rent	410.00
<b>Amended Requested Monetary Order</b>	<b>\$5,810.00</b>

### Analysis

Section 20 of the *Act* requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the *Act*, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the *Act*.

Based on the landlord’s undisputed testimony, I find the tenant failed to pay any rent within five days of receiving the 10 Day Notice and did not make an application pursuant to section 39(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 39(5) of the *Act*, the failure of the tenant to take either of these actions within five days led to the end of this tenancy on May 23, 2017, the effective date on the

10 Day Notice. In this case, the tenant and anyone on the premises were required to vacate the premises by May 23, 2017. As this has not occurred, I find that the landlord is entitled to a two (2) day Order of Possession.

Section 60 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party

Based on the landlord's written evidence and undisputed affirmed testimony, I find the landlord is entitled to a monetary award of \$5,810.00 for unpaid rent and late fees owing for this tenancy from April 2016 to October 2017.

As the landlord has been successful in this application, I allow them to recover the \$100.00 filing fee from the tenant.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** 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.

Pursuant to section 60 of the *Act*, I grant a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid rent, late fees and to recover the filing fee from the tenant:

Item	Amount
Late Rent Fees – March, April 2016	\$50.00
Unpaid May 2016 Rent	400.00
Unpaid June 2016 Rent	400.00
Unpaid July 2016 Rent	400.00
Unpaid August 2016 Rent	400.00
Late Rent Fees – May, June, July, August 2016	100.00
Unpaid September 2016 Rent	400.00
Unpaid October 2016 Rent	400.00
Unpaid November 2016 Rent	400.00
Unpaid December 2016 Rent	400.00
Unpaid January 2017 Rent	410.00

Unpaid April 2017 Rent	410.00
Unpaid July 2017 Rent	410.00
Unpaid August 2017 Rent	410.00
Unpaid September 2017 Rent	410.00
Unpaid October 2017 Rent	410.00
Filing Fee for this Application	100.00
<b>Total Monetary Order</b>	<b>\$5,910.00</b>

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 Small Claims Division of the Provincial Court and enforced as Orders 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: October 23, 2017

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Residential Tenancy Branch