



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LOMBARDY MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) that was filed by the Landlord under the *Manufactured Home Park Tenancy Act* (the “Act”), 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 Tenant 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 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 these documents as explained below.

The Agent testified in the hearing that the Application and the Notice of Hearing were sent to the Tenant on September 16, 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 deemed served with these documents on September 21, 2017, five days after the documents were sent by registered mail.

At the request of the Agent, copies of the Decision and any resulting Order of Possession will be e-mailed to the Agent at the address provided in the hearing.

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 pursuant to section 48 of the *Act*?

Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that the month-to-month tenancy began March 15, 2017, and that pad rent in the amount of \$500.00 is due on the first day of each month.

The Agent testified that the Tenant failed to pay rent on August 1, 2017, as required under the tenancy agreement and that as a result, the Tenant was served with a 10 day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”).

The 10 Day Notice in the documentary evidence before me, dated August 2, 2017, has an effective vacancy date of August 12, 2017, and indicates that on August 1, 2017, the Tenant owed \$500.00 in rent. The Agent testified that the 10 Day Notice was posted to the door of the Tenants mobile home on August 2, 2017, and submitted a signed Proof of Service Notice to End Tenancy (the “Proof of Service”) indicating that the 10 Day Notice was served in the manner described above.

The Agent testified that on August 12, 2017, the Tenant paid \$400.00 towards the outstanding rent and submitted a ledger and a rent receipt in support of this testimony. The Agent testified that since that time, the Tenant has made not further rent payments.

Analysis

Section 39 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.
- (2) A notice under this section must comply with section 45 [*form and content of notice to end tenancy*].

(3) A notice under this section has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent.

Section 39 of the *Act* also states:

(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 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 Tenant was deemed served with the 10 Day Notice on August 5, 2017, three days after it was posted to the door of the Tenant's mobile home. I also find that the Tenant was obligated to pay rent in the amount of \$500.00, on time and in full each month.

Section 48 of the *Act* states that a landlord may request an Order of Possession of a manufactured home site if a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

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 39(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 39(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date

of the 10 Day Notice, August 15, 2017, and the Landlord is therefore entitled to an Order of Possession.

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 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 *Manufactured Home Park Tenancy Act*.

Dated: November 15, 2017

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Residential Tenancy Branch