



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes OPRM-DR, FFL

### Introduction

This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 48(4) of the *Manufactured Home Park Tenancy Act* (the *Act*), and dealt with an Application for Dispute Resolution by the landlord for an Order of Possession based on unpaid rent and a monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 28, 2017, the landlord's agent served the tenant with the Notice of Direct Request Proceeding via registered mail. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Section 83 of the *Act* determines that a document served in this manner is deemed to have been received 5 days after service.

Based on the written submissions of the landlord, and in accordance with sections 82 and 83 of the *Act*, I find that the tenant has been deemed served with the Direct Request Proceeding documents on December 03, 2017, the fifth day after their registered mailing.

### 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*?

Is the landlord entitled to recover the filing fee for this application pursuant to section 65 of the *Act*?

### Background and Evidence

The landlord submitted the following evidentiary material:

- A copy of the Proof of Service of the Notice of Direct Request Proceeding served to the tenant;
- A copy of a manufactured home park tenancy agreement which was signed by the landlord's agent and the tenant on July 23, 2015, indicating a monthly rent of \$335.00 due on the first day of the month for a tenancy commencing on August 01, 2015;
- A Direct Request Worksheet showing the rent owing during the portion of this tenancy in question, on which the landlord establishes a monetary claim in the amount of \$3,860.00 for outstanding rent owing as of October 01, 2017;
- A copy of a letter, dated April 07, 2017, in which the landlord alerts the tenant to outstanding rent owed as of April 01, 2017;

- A copy of a rental ledger titled "Customer Balance Detail" which establishes the payments received and outstanding balance with respect to the tenancy;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) dated October 12, 2017, which the landlord states was served to the tenant on October 13, 2017, for \$3,860.00 in unpaid rent due on October 01, 2017, with a stated effective vacancy date of October 23, 2017;
- A copy of the Proof of Service of the Notice showing that the landlord's agent "EK" served the Notice to the tenant by way of leaving a copy in the mailbox or mail slot at the tenant's residence at 11:00 AM on October 13, 2017. The Proof of Service form establishes that the service was witnessed by "EP" and a signature for "EP" is included on the form.

The Notice restates section 39(4) of the *Act* which provides that the tenant had five days to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the effective date of the Notice. The tenant did not apply to dispute the Notice within five days from the date of service and the landlord alleged that the tenant did not pay the rental arrears.

### Analysis

I have reviewed all documentary evidence provided by the landlord. Section 90 of the *Act* provides that because the Notice was served by way of leaving a copy in the mail box or mail slot at the tenant's residence, the tenant is deemed to have received the Notice three days after it was left in the mail box or mail slot. In accordance with sections 88 and 90 of the *Act*, I find that the tenant is deemed to have received the Notice on October 16, 2017, three days after it was left in the mail box or mail slot.

Direct Request proceedings are *ex parte* proceedings. In an *ex parte* proceeding, the opposing party is not invited to participate in the hearing or make any submissions. As there is no ability for the tenants to participate, there is a much higher burden placed on landlords in these types of proceedings than in a participatory hearing. This higher burden protects the procedural rights of the excluded party and ensures that the natural justice requirements of the Residential Tenancy Branch are satisfied.

In this type of matter, the landlords must prove they served the tenant with the Notice of Direct Request Proceeding, the Notice, and all related documents with respect to the Direct Request process, in accordance with the *Act* and Policy Guidelines. In an *ex parte* Direct Request Proceeding, the onus is on the landlord to ensure that all submitted evidentiary material is in accordance with the prescribed criteria and does not lend itself to ambiguity or give rise to issues that may need further clarification beyond the purview of a Direct Request Proceeding. If the landlord cannot establish that all documents meet the standard necessary to proceed via the Direct Request Proceeding, the application may be found to have deficiencies that necessitate a participatory hearing, or, in the alternative, the application may be dismissed.

The landlord contends that the tenant has failed to pay rent for the period of December 2016 to November 2017. On the Direct Request worksheet provided by the landlord, for the period of January 01, 2017 to November 01, 2017, the landlord calculates the unpaid rent owing based on monthly rent owed in the amount of \$345.00. However, the landlord has not provided any evidentiary material to clearly demonstrate whether the monthly rent owed under the tenancy was raised from \$335.00, as established in the tenancy agreement, to the amount of \$345.00 indicated on the Direct Request worksheet. The landlord has not provided any documentary evidence to clarify why the calculation of the monthly rent, for the period of January 01, 2017 to November 01, 2017, is depicted to be \$345.00 instead of \$335.00 as stated in the tenancy agreement.

The landlord has not provided any evidentiary material, such as a Notice of Rent Increase forms to demonstrate that the monthly rent was increased, nor has the landlord provided any evidence to illustrate

that the parties amended the terms of the tenancy agreement to agree upon a new monthly rent amount, or that the parties mutually agreed in writing on a new monthly rent amount. Therefore, in determining the monthly rent amount agreed upon by the parties, and in calculating the balance of unpaid rent owed by the tenant as of October 01, 2017, I will rely upon the information provided in the tenancy agreement, which establishes that the monthly rent amount to be paid by the tenant is \$335.00. On the Direct Request worksheet, the landlord has also included a late fee in the amount of \$25.00. As reimbursement for additional fees, such as late payment fees, cannot be sought by way of the Direct Request process, I will address only the portion of the monetary claim which arises from unpaid rent.

I find that the tenant was obligated to pay monthly rent in the amount of \$335.00, as established in the tenancy agreement. I accept the evidence before me, as stated on the landlord's application, that the tenant has failed to provide payment of rent owed under the tenancy for the period of December 2016 to November 2017. As the October 12, 2017 Notice alerted the tenant to the balance of unpaid rent owed as of October 01, 2017, the landlord is seeking unpaid rent owed only up to October 01, 2017, and is not seeking rent owed for the month of November 2017. I further find that the balance of unpaid rent owed as of October 01, 2017 is \$3,735.00.

I find that the tenant received the Notice on October 16, 2017. I note that the balance of unpaid rent owed, as identified on the Notice issued to the tenant, in the amount of \$3,860.00, is a higher amount than the balance of unpaid rent owed in the amount \$3,735.00, as calculated using the monthly rent amount depicted in the tenancy agreement. However, including a higher amount on the Notice issued to the tenant does not invalidate the Notice, as, at a minimum, rent in the amount of \$3,735.00 was owed at the time it was issued.

I accept the landlord's undisputed evidence and find that the tenant did not pay the rent owed in full within the 5 days granted under section 39 (4) of the *Act* and did not apply to dispute the Notice within that 5-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 Notice, October 26, 2017.

Therefore, I find that the landlord is entitled to an Order of Possession and a monetary Order of \$3,735.00 for the balance of unpaid rent owing as of October 01, 2017.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) 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 and 65 of the *Act*, I find that the landlord is entitled to a monetary Order in the amount of \$3,835.00 for unpaid rent and for the recovery of the filing fee for this application. 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 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: December 06, 2017

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Residential Tenancy Branch