



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR DR FF

### Introduction

This participatory hearing was convened after the issuance of a January 18, 2018 Interim Decision of an Adjudicator. The Adjudicator determined that the landlords' application could not be considered by way of the Residential Tenancy Branch's direct request proceedings, as had been originally requested by the landlords. The Adjudicator reconvened the landlords' application for the following to a participatory hearing:

- an Order of Possession pursuant to section 55 of the *Act* for unpaid rent;
- a Monetary Order pursuant to section 67 of the *Act* for unpaid rent; and
- a return of the filing fee pursuant to section 72 of the *Act*.

Pursuant to section 58 of the *Residential Tenancy Act*. (the *Act*), I was designated to hear this matter.

The landlords were represented by landlord, J.S. (the "landlord") who attended the hearing, while the tenants did not. The landlord was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

Following opening remarks, the landlord said that she had been awarded an Order of Possession following a February 2, 2018 hearing before the *Residential Tenancy Branch*. The landlord said she no longer required an Order of Possession but sought the monetary award.

The landlord said the tenants were individually sent Notice of Hearing documents by way of Canada Post Registered Mail.

Issue(s) to be Decided

Are the landlords entitled a monetary award for unpaid rent?

Can the landlords recover the filing fee?

Background and Evidence

The landlord explained that the tenants had failed to pay rent since November 2014. She said that rent was meant to be \$200.00 per month; however, her father who is named as a co-landlord had failed to collect rent from November 2014 onwards because he had accepted the various reasons for non-payment which the tenants had provided to him.

The landlord said she was seeking a monetary award of \$7,500.00 in respect of unpaid rent from November 2014 to September 2017.

Analysis

The landlord is seeking a monetary award of \$7,500.00 for non-payment of rent from November 2014 to September 2017. During the hearing, I discussed with the landlord the issue of waiver. The landlord said she understood that this may arise and wished for an explanation of the matter.

*Residential Tenancy Policy Guideline #11 states;*

*There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel.*

Based on the oral testimony presented at the hearing, I find that there has been an expressed waiver of the landlords' right to claim a monetary award. Landlord J.S. explained to the hearing that her father had been aware that rent was unpaid, yet agreed to allow the tenants to remain on the property for nearly four years without pursuing the matter through the *Residential Tenancy Branch*. I find that this amounts to a voluntary and intentional relinquishment of a known right. If the landlords had pressing concerns regarding non-payment of rent, these matters should have been addressed at an earlier date. For these reasons, I dismiss the landlords' application for a monetary award.

As the landlords were unsuccessful in their application, they must bear the cost of their own filing fee.

### Conclusion

The landlords' application for a monetary award is dismissed.

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: March 6, 2018

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Residential Tenancy Branch