



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPUM-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 utilities and a Monetary Order.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on June 09, 2018, the landlord sent the tenant the Notice of Direct Request Proceeding by registered mail to the rental unit. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing. Based on the written submissions of the landlord and in accordance with sections 82 and 83 of the *Act*, I find that the tenant will be deemed served with the Direct Request Proceeding documents on June 14, 2018, 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 utilities 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 a manufactured home park tenancy agreement which was signed by the landlord and the tenant on March 21, 2002, indicating a monthly rent of

\$242.00, due on the first day of each month. The tenancy agreement states that “The tenant shall pay utility charges for all utilities supplied to the Pad, whether by the landlord or directly by the utility company”;;

- A copy of a demand letter from the landlord to the tenant, dated February 03, 2018, requesting payment of utilities in the amount of \$307.29;
- The landlord provided a copy of a registered mail receipt with a Tracking Number, dated May 22, 2018, as proof of service of the demand letter to the tenant;
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated May 22, 2018, for \$1,120.00 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of June 10, 2018;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent by registered mail to the rental unit at 10:00 a.m. on May 22, 2018. The landlord provided a copy of the Canada Post Customer Receipt containing the Tracking Number to confirm this mailing.; and
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

### Analysis

Section 39 (6) of the *Act* allows the landlord to treat the unpaid utilities as unpaid rent, 30 days after the tenant is given a written demand for them.

I have reviewed all documentary evidence and in accordance with sections 81 and 83 of the *Act*, I find that the tenant was deemed served with the 10 Day Notice and the demand letter on May 27, 2018, five days after their mailing.

I find that the service of the demand letter by registered mail to the tenants on May 22, 2018, is less than 30 days from the time that the 10 Day Notice was issued to the tenants on that same date and that not enough time has passed to allow the landlord to treat the unpaid utilities as unpaid rent. If the landlord served the February 03, 2018, demand letter to the tenant before May 22, 2018, they did not provide any proof of that service with the landlord's application.

Therefore, I dismiss the landlord's application to end this tenancy and obtain an Order of Possession on the basis of the 10 Day Notice dated May 22, 2018, without leave to reapply.

The 10 Day Notice dated May 22, 2018, is cancelled and of no force or effect.

For the same reasons identified in the 10 Day Notice, the landlord's application for a monetary Order for unpaid utilities is dismissed, with leave to reapply.

As the landlord was not successful in this application, the landlord's application to recover the filing fee is dismissed, without leave to reapply.

### Conclusion

The landlord's application for an Order of Possession on the basis of the 10 Day Notice dated May 22, 2018, is dismissed, without leave to reapply.

The 10 Day Notice dated May 22, 2018, is cancelled and of no force or effect.

This tenancy continues until it is ended in accordance with the *Act*.

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: June 13, 2018

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Residential Tenancy Branch