



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0868732 B.C. LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      For the Landlord:    OPRM-DR, FFL  
For the Tenants:      MNDCT

### Introduction

This hearing dealt with cross applications for dispute resolution filed by the parties under the *Manufactured Home Park Tenancy Act* (the “Act”). The landlord’s application for dispute resolution was made on May 30, 2018 (the “landlord’s application”). The landlord applied for the following relief pursuant to the Act:

1. an order of possession for unpaid rent;
2. a monetary order for unpaid rent; and,
3. a monetary order for recovery of the filing fee.

The tenants’ application for dispute resolution was made on June 19, 2018 (the “tenant’s application”). The tenants applied for a monetary order for the proceeds of a sale of a manufactured home to the landlord.

The landlord’s agent and the male tenant attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. No issues of service were raised by the parties in respect of the Notice of Dispute Resolution Proceeding package.

While I have reviewed all oral and documentary evidence submitted, only relevant evidence pertaining to the issues of this application is considered in my decision.

### Preliminary Issue – Jurisdiction to Hear Tenant’s Claim

The tenants’ claim for a monetary order was made for the purpose of obtaining monies equal to the value of a private transaction between him and one of the landlord’s shareholders. The tenant struck a deal with the shareholder whereby if he transferred ownership in a manufactured home to the shareholder that the landlord would accept that transaction—and the agreed upon value of \$2,500.00—as compensation for rent.

I explained to the tenant that the Act does not cover real estate or real property transactions between parties, and that I would not have the jurisdiction to hear his claim.

He understood, and clarified that the purpose for bringing this claim was primarily to obtain some clarity around the transaction, and what the landlord intended to do.

Given the above, I dismiss the tenant's claim without leave to reapply.

### Issues to be Decided

1. Is the landlord entitled to an order of possession for unpaid rent?
2. Is the landlord entitled to a monetary order for unpaid rent?
3. Is the landlord entitled to a monetary order for recovery of the filing fee?

### Background and Evidence

The landlord's agent testified that the tenant has lived there since 2014, though the tenant testified that he has lived in the park for about 27 years. Park ownership has changed hands several times over the years, and the current landlord lost the original tenancy agreement. Monthly rent is \$334.00, due on the first of the month.

In January 2018, the tenant's manufactured home burned down (the fire department condemned it), and so the tenant decided to stop paying rent. As of the date of the hearing, the tenant owes \$2,085.60 in unpaid rent. The landlord submitted into evidence a copy of a ledger reflecting payments made by the tenant since January 2016 until May 2018, and which shows the accumulating balance for unpaid rent.

The agent testified that she served the tenant a 10 Day Notice to End Tenancy for Unpaid Rent by leaving it in his mailbox (the "Notice"). The Notice was left in the mailbox on May 5, 2018, with an end of tenancy date of May 15, 2018. The tenant argued that he was not properly served, as the Notice was left in the mailbox (presumably still intact) of his now-burned-down manufactured home, and not left in the mailbox of the home where he currently resides. While the tenant could not recall even an approximate date on which he received it, he did acknowledge receiving it.

The tenant testified and that he has not paid rent because "he had a deal with the owner [the shareholder]" whereby the owner would take a manufactured home owned by the tenant in exchange for a value set at \$2,500.00, which would then be used to pay for the tenant's outstanding unpaid rent balance. This was an oral agreement and no paperwork was available, or tendered into evidence to substantiate the tenant's testimony in this regard.

In rebuttal, the landlord's agent clarified that the "owner" to which the tenant referred is one of the primary shareholders of the corporate landlord. She further testified that she is not aware of any deal between the tenant and the shareholder whereby rent would be paid via the transfer or sale of a manufactured home.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 20 of the Act requires that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

The landlord's agent testified, and provided documentary evidence to support the landlord's claim, that the tenants did not pay rent when it was due, and have not paid rent for the period of January to July 2018, inclusive, and that they owe \$2,085.60.

There is no evidence before me to find that the tenants filed an application for dispute resolution within the five days permitted.

Further, there is no evidence before me to find that the tenants had any right under the Act to deduct all or a portion of the rent. That the tenant believed there was a deal between him and one of the shareholders to sell a manufactured home in exchange for the balance of unpaid rent is not a permitted right under the Act to not pay the rent. The tenant did not provide any documentary evidence or call any witnesses that might have substantiated his argument. The landlord's agent testified that she does not know anything about a deal as described.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the tenant has failed to provide any evidence that the deal he purportedly made with one of the landlord's shareholders would satisfy his obligation to pay rent.

Subsection 48(2) of the Act states that a landlord may request an order of possession of a manufactured home site when a notice to end the tenancy has been given by the landlord, and the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired.

Applying section 20 of the Act to the testimony regarding the tenants' failure to pay rent, and regarding the tenant's failure to apply for dispute resolution, pursuant to sections 48 and 20 of the Act, I hereby grant an order of possession to the landlord. This order is effective two days after service upon the tenants.

Further, taking into consideration all of the oral and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for unpaid rent.

Therefore, I find that the landlord is entitled to a monetary award of \$2,085.60 for unpaid rent, pursuant to section 60 of the Act.

I grant the landlord a monetary award of \$100.00 for recovery of the filing fee.

### Conclusion

The landlord is granted an order of possession for unpaid rent. This order must be served on the tenants and is effective two days after service on the tenants. This order may be filed in and enforced as an order of the Supreme Court of British Columbia.

The landlord is granted a monetary order in the amount of \$2,185.60. This order must be served on the tenants and may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1 of the Act.

Dated: August 1, 2018

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Residential Tenancy Branch