



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

matter regarding HIGHVIEW ESTATES - 2050791 ALTA  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

On January 18, 2019, the Landlord applied for a dispute resolution proceeding seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the "Notice") pursuant to Section 39 of the *Manufactured Home Park Tenancy Act* (the "Act"), seeking a Monetary Order for unpaid rent pursuant to Section 60 of the *Act*, and seeking recovery of the filing fee pursuant to Section 65 of the *Act*.

B.S. attended the hearing as an agent for the Landlord; however, the Tenant did not appear. B.S. provided a solemn affirmation.

She confirmed that she served the Tenant the Notice of Hearing package and evidence by registered mail on January 18, 2019 (the registered mail tracking number is on the first page of this decision). Based on this undisputed evidence, and in accordance with Sections 82 and 83 of the *Act*, I am satisfied that the Tenant was deemed to have received the Notice of Hearing package and evidence five days after it was mailed.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to monetary compensation?
- Is the Landlord entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

B.S. stated that the tenancy started on January 1, 2018 and rent was established at \$360.00 per month, due on the first day of each month.

She testified that the Notice was served by registered mail to the Tenant on December 5, 2018 and was signed for by the Tenant. The Notice indicated that \$1,580.00 was outstanding on December 1, 2018. As well, the Notice indicated that the effective end date of the tenancy was December 13, 2018. She advised that the amount of arrears that she is seeking is **\$1,605.00** as the Tenant also owes \$25.00 for late payment of rent as per the tenancy agreement that was submitted as documentary evidence.

The Notice that was submitted as documentary evidence was not signed by the Landlord; however, she stated that she had two copies of the Notice. One was signed and served to the Tenant, and her copy, that she submitted as evidence, was unsigned. Based on this solemnly affirmed testimony, I have accepted the undisputed evidence that the Tenant was served with a signed copy of the Notice.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

I have reviewed the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent to ensure that the Landlord has complied with the requirements as to the form and content of Section 45 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 45.

Section 20 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent.

Should the Tenant not pay the rent when it is due, Section 39 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. Once this Notice is

received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant was deemed to have received the Notice on December 10, 2018. According to Section 39(4) of the *Act*, the Tenant has 5 days pay the overdue rent or to dispute this Notice. Section 39(5) of the *Act* states that *“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 is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date.”*

As the fifth day fell on December 10, 2018, the Tenant must have made his Application or paid the rent in full by this day at the latest. As outlined above, the undisputed evidence is that the rent was not paid in full when it was due, nor was it paid within five days of the Tenant receiving the Notice. Moreover, there is no evidence before me that the Tenant had a valid reason for withholding the rent pursuant to the *Act*.

As the Landlord’s Notice is valid, as I am satisfied that the Notice was served in accordance with Section 82 of the *Act*, and as the Tenant has not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 39 and 48 of the *Act*.

I also find that the Landlord is entitled to a monetary award and I grant the Landlord a Monetary Order in the amount of **\$1,605.00**.

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

The Landlord is provided with a formal copy of an Order of Possession effective **two days after service of this Order** on the Tenant. Should the Tenant or any occupant on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

The Landlord is provided with a Monetary Order in the amount of **\$1,705.00** 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: March 4, 2019

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Residential Tenancy Branch