



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gemini Ventures Ltd. dba Birchwood Heights and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL, OPR, FFL

### Introduction

This decision is in respect of the landlord's application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act"). The landlord sought

1. an order of possession under sections 39 and 48 of the Act,
2. an order for compensation under section 60 of the Act, and
3. an order for compensation for the filing fee under section 65 of the Act.

A dispute resolution hearing was convened on March 11, 2019 and the landlord's agent and the tenant attended, were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses. The parties did not raise any issues regarding the service of documentary evidence.

While I have reviewed all oral and documentary evidence submitted that met the requirements of the *Rules of Procedure*, under the Act, and to which I was referred, only evidence relevant to the issues of this application are considered in my decision.

### Preliminary Issue: Order of Possession Previously Resolved

I note that the parties obtained an arbitration decision on February 5, 2019 wherein a 10 Day Notice to End Tenancy for Unpaid Rent (on which the landlord's current application for an order of possession is made) was dismissed. As this matter has previously been decided, and based on the legal principle of *res judicata*, I dismiss this aspect of the landlord's application without leave to reapply.

### Issues to be Decided

1. Is the landlord entitled to an order for compensation for unpaid “rent”, consisting of late fees and costs for a water inspection and repair?
2. Is the landlord entitled to an order for compensation for the filing fee?

### Background and Evidence

The landlord’s agent (hereafter the “landlord”) testified that they seek \$439.85 in late charges, repairs to the tenant’s water line, and unpaid rent. A monetary order worksheet was submitted into evidence.

I asked the landlord whether he sought the “unpaid rent” amounts (listed as such on the monetary order worksheet) as rent or not, because the arbitrator’s decision of February 5, 2019 found that these amounts did not constitute “rent” under the Act. The landlord confirmed that they were late charges, and that the tenancy agreement includes late charges as a term of the tenancy. A copy of the written tenancy agreement was submitted into evidence.

The “rent” amounts were late charges varying between \$5.00 and \$25.00 for February-April 2018, June and July 2018, and September-December 2018, inclusive, for a total of \$170.00.

The landlord also sought compensation in the amount of \$133.35 for a water line repair and \$136.50 for a waterline inspection.

The landlord testified that the tenant had low water pressure and repairs were needed. The source of the low pressure was a blockage on the tenant’s side of the valve, and as such the tenant is responsible. “The blockages were at the coupler on the tenant’s side,” he explained. The landlord brought in a plumber to fix the blockages, repair and replace the parts. This cost \$133.35.

The second part of the landlord’s claim had to do with a waterline inspection. Under municipal bylaws all units must have access to the connection points. The landlord had to remove the tenant’s skirt to access the connection points because the tenant had no access hole at the service point. This inspection and the removal of the skirt took approximately one hour and cost \$136.50.

The tenant testified that the issue of late fees was dealt with at a previous arbitration hearing on August 9, 2018, and that the parties agreed to resolve the issues through a settlement agreement. She commented that it was “determined these weren’t late fees” and that the landlord was “supposed to take off the late fees.” Arrangements had been made whereby the tenant was to start paying rent by post-dated cheques, thereby lessening the likelihood of late fees. The tenant was confused as to why she continues to incur late fees given that she pays by post-dated cheque.

She testified that she has been having water issues in the park since June 2018 and that the landlord (that is, the agent) is largely unresponsive to her emails. She further testified that there was no discussion with the landlord about the work being done that required the skirting to come off, and that the landlord had no permission to go under the home to make the repairs. “I had no idea they were under the trailer,” she commented. The tenant explained that there were cheaper options for making the repairs.

In rebuttal, the landlord testified that the side of the water line that is clear is the responsibility of the landlord, while the side of the line that was swollen was on the tenant’s side. The landlord went ahead and replaced the valve on the tenant’s side of the water line.

The landlord also stated that, regarding the settlement agreement and the late fees, there was no discussion about the waiving or wiping away of the late fees. It was “not part of the settlement agreement.”

As for the skirting, it was not nailed on, but screwed on, and not a simple removal to make. The tenant countered by testified that the access door is right near the service and is “readily removable.” She received no communication from the landlord that the access door was inaccessible.

### 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 7 of the Act states that if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 60 of the Act states that if damage or loss results from a party not complying with the Act, the regulation or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, in order for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

### **Landlord's Claim for Late Fees**

The landlord seeks compensation in the amount of \$170.00 for late fees. The tenant argued that these fees were essentially waived as a result of a settlement agreement from August 9, 2018.

The arbitrator's decision of August 13, 2018 outlines the terms of the settlement agreement as follows (reproduced as written):

1. The parties agree that they will treat each other respectfully.
2. The parties agree that the Tenant will abide by the park speed limit of 15 kmh.
3. The parties agree that the Tenant will not play loud music after 10 pm.
4. The parties agree that the Tenant will provide rent cheques to the on site manager in advance of when the rent is due.
5. The parties agree that the Tenant may not travel into areas marked as no trespass.
6. The Landlord withdraws his application in full as part of this mutually settled agreement.

7. The Tenant withdraws her Application to dispute the 1 Month Notice dated June 5, 2018.

Nowhere in the terms of the settlement agreement is there a reference to late fees being waived or wiped or otherwise dismissed. The landlord submitted into evidence a document titled "Transaction Listing" which references the late charges as claimed by the landlord.

Taking into consideration all the oral testimony 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 late fees totaling \$170.00. As such, I grant the landlord a monetary award in the amount of \$170.00 for the late fees.

### **Landlord's Claim for Water Line Repair and Inspection**

The landlord testified that repairs were made to the tenant's property, and that she now owes the landlord \$133.35. The tenant testified that there was no permission sought for the landlord to do this work, and that "there are cheaper options."

While the tenant may be responsible for the blockage and swelling of the water lines, she is not liable for costs incurred by the landlord to repair what is her property. The landlord cannot make repairs and then after-the-fact seek to be compensated for those repairs.

The parties provided conflicting testimony regarding whether access to the water supply connection points was easy (via a "readily removable" access door) or difficult (via the time-consuming removal of the skirt), and the landlord claims costs based on time involved to remove the skirt. The landlord did not point me to any section of the Act or the tenancy agreement under which the tenant would be potentially liable for costs arising from said skirt removal or how she breached the Act that might render her liable.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving their claim for compensation related to the water line repairs or the inspection-related costs, and I dismiss that aspect of their claim without leave to reapply.

### **Landlord's Claim for Filing Fee**

As the landlord was partially successful in its claim I grant them a monetary award of \$50.00 as partial recovery of the filing fee, pursuant to section 72 of the Act.

### **Conclusion**

I hereby grant the landlord a monetary order in the amount of \$220.00, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

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 11, 2019

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Residential Tenancy Branch