



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SPRUCE CAPITAL TRAILER PARK LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      **FFL MNRL OPC**

### Introduction

This hearing dealt with an application by the landlord under the *Manufactured Home Park Tenancy Act* (the *Act*) for the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act* or tenancy agreement pursuant to section 60 of the *Act*;
- An order for possession pursuant to section 48;
- Authorization to recover the filing fee for this application pursuant to section 65.

Agents LJ and SC attended for the landlord (“the landlord”). The tenant attended.

Both parties had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The tenant acknowledged receipt of the landlord's Notice of Hearing and Application for Dispute Resolution. Neither party raised issues of service. I find the landlord served the tenant pursuant to section 82 of the *Act*.

### Issue(s) to be Decided

Is the landlord entitled to the following:

- A monetary order for unpaid rent and for compensation for damage or loss under the *Act* or tenancy agreement pursuant to section 60 of the *Act*;
- An order for possession pursuant to section 48; and
- Authorization to recover the filing fee for this application pursuant to section 65.

### Background and Evidence

The parties agreed the month-to-month tenancy started January 1, 2016 and is ongoing. Rent is \$321.00 a month payable on the first of the month. The landlord submitted a copy of the tenancy agreement.

The landlord issued a One Month Notice for Cause (“One Month Notice”) dated March 3, 2019. The parties agreed that the landlord personally served the tenant with the Notice on March 22, 2019 and the One Month Notice contained an effective date of April 21, 2019 (corrected to April 30, 2019).

The landlord submitted a copy of the One Month Notice. The Notice sets out the following as grounds for the termination of the tenancy:

- Tenant is repeatedly late paying rent.
- Tenant or a person permitted on the property by the tenant has:
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The One Month Notice stated the tenant had the right to dispute the Notice within 10 days after receipt by filing an Application for Dispute Resolution. The tenant did not file an Application for Dispute Resolution within 10 days.

While the landlord submitted testimony regarding all grounds set out in the Notice, the landlord primarily relied on the first ground, that is, that the tenant is repeatedly late paying rent.

The landlord submitted testimony supported by copies of tenant ledgers that the tenant was late paying rent every month from May 2018 to May 2019. The tenant acknowledged he had been late paying rent each month from May 2018 up to and including November 1, 2018. The tenant stated the late payments resulted from financial challenges which had subsequently been resolved.

The tenant stated that payments from December 1, 2018 to date were made on time. The landlord disputed this assertion and relied on the evidence of the ledgers as in rebuttal. The tenant did not submit any documentary evidence.

The parties agreed the tenant owed the landlord \$32.00 in outstanding rent. The landlord requested a monetary award in this amount.

The landlord requested reimbursement of the filing fee of \$100.00.

### Analysis

Based on the parties' evidence, I find the landlord personally served the tenant with the One Month Notice on March 22, 2019 pursuant to section 81 of the *Act*. I find the Notice complied with section 45 of the *Act*.

Section 40(4) of the *Act* allows a tenant up to 10 days after the date the tenant receives the notice to file an Application for Dispute Resolution seeking to cancel a One Month Notice.

Section 40 (5) states that if a tenant who has received a notice under this section does not 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 by that date.

Section 40(5) states as follows:

- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant*
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and*
  - (b) must vacate the manufactured home site by that date.*

As there is no evidence before me that the tenant has filed an Application for Dispute Resolution seeking to cancel the One Month Notice served on March 22, 2019, I find the tenant is conclusively presumed to have accepted the tenancy ended on the corrected effective date of April 30, 2019 and must vacate the rental unit, pursuant to section 40(5).

I therefore grant the landlord an order of possession effective two days after service.

### *Repeatedly Late Paying Rent*

Based on the evidence of the parties and the balance of probabilities, I further find that the landlord has met the burden of proof that the tenant was repeatedly late paying rent as claimed in the One Month Notice.

Section 40 of the *Act* allows a landlord to end a tenancy by giving notice if the tenant is repeatedly late paying rent. The section states as follows:

**40** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant is repeatedly late paying the rent; ...

*Residential Tenancy Policy Guideline # 38 – Repeated Late Payment of Rent* states that three late payments are the minimum number to justify a notice under these provisions. The Guideline states as follows:

*The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.*

*Three late payments are the minimum number sufficient to justify a notice under these provisions.*

I find that the parties entered into a legal contract (the tenancy agreement) that obligated the tenant to pay rent on the first of each month. I find, as agreed by the parties, that the tenant was late paying rent seven times in a 7-month period. I find the landlord has met the burden of proof on a balance of probabilities that the tenant was repeatedly late paying rent and the landlord is entitled to end the tenancy on this ground.

### *Monetary Award*

As the parties agree the rent is outstanding in the amount of \$32.00, I grant the landlord a monetary award in this amount.

### *Filing Fee*

As the landlord has been successful in this application, I grant the landlord a monetary award in the amount of \$100.00 for reimbursement of the filing fee.

The total monetary order is \$132.00.

### Conclusion

I grant the landlord an order of possession effective two days after service on the tenant. This order must be served on the tenant. If the tenant fails to comply with this order, the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

I grant the landlord a monetary order in the amount of \$132.00. If the tenant fails to comply with this order, the landlord may file the order in the Provincial Court (Small Claims) to be 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 *Residential Tenancy Act*.

Dated: May 27, 2019

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Residential Tenancy Branch