



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ZAM ENTERPRISES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM-DR, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Manufactured Home Park Tenancy Act* (the “*Act*”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for monetary compensation for unpaid rent, and for the recovery of the filing fee paid for the Application for Dispute Resolution.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, while no one called in for the Tenant during the approximately 10 minutes that the phone line remained open. The Landlord was affirmed to be truthful in her testimony and stated that the Tenant was served with the Notice of Dispute Resolution Proceeding package and a copy of the Landlord’s evidence by registered mail.

The registered mail tracking information was submitted into evidence along with a photo that shows the package was returned as unclaimed. The registered mail tracking number is included on the front page of this decision. I find that despite not claiming the mail, the Tenant was duly served in accordance with the *Act*. I also note that failure to claim mail is not a ground for review under the *Act*.

The Landlord was provided full opportunity to present testimony and evidence at the hearing.

### Preliminary Matters

The Landlord clarified during the hearing that C.L. who was named as a Tenant/Respondent on the Application for Dispute Resolution is an occupant and not a

tenant. As only T.M. is named on the tenancy agreement as a Tenant, the application was amended to remove respondent C.L.

The Landlord filed the application on May 13, 2019. At the hearing the Landlord stated that they have not received rent for June or July 2019 and would therefore like to add an additional two months of rent to their claim. As the Tenant should reasonably expect that rent is due on the first day of each month as stated in the tenancy agreement and as required by Section 20 of the *Act*, I do not find that adding an additional two months of rent to the claim would unfairly prejudice the Tenant. Therefore, the application was amended to add two months of unpaid rent to the Landlord's claim. These amendments were made pursuant to Section 57(3)(c) of the *Act*.

### Issues to be Decided

Is the Landlord entitled to an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent?

Is the Landlord entitled to monetary compensation for unpaid rent?

Should the Landlord be awarded the recovery of the filing fee paid for the Application for Dispute Resolution?

### Background and Evidence

The Landlord provided undisputed testimony on the tenancy which was confirmed by the tenancy agreement included in evidence. The tenancy agreement was signed November 1, 2008. Current monthly rent is \$348.50 which began on May 1, 2019. Rent prior to May 1, 2019 was \$340.00 as confirmed by copies of rent increase notices submitted into evidence. Rent is due on or before the first day of each month.

The Landlord testified that a 10 Day Notice was served to the Tenant on May 2, 2019 in the Tenant's mailbox. The Landlord submitted a proof of service form signed by a witness on May 2, 2019 which confirms service as stated by the Landlord.

The 10 Day Notice was submitted into evidence and states that rent in the amount of \$373.50 was unpaid as due on May 1, 2019. The Landlord stated that this includes a late payment fee of \$25.00. She referenced the Park Rules and Regulations submitted into evidence which outline that a \$25.00 late payment fee will be charged if rent is not paid on time.

The Landlord testified that rent was not paid for March or April 2019 either, in the amount of \$340.00 per month along with a \$25.00 late fee each month. The Landlord submitted a copy of previous 10 Day Notices served, including a 10 Day Notice served on March 2, 2019 and one served on April 2, 2019.

The Landlord stated that no amount has been paid towards the rent owing and that rent for June and July 2019 was also not paid as due. Therefore, the Landlord is seeking a total of \$1,850.50 for five months of unpaid rent and five months of late payment fees.

### Analysis

I accept the undisputed testimony and evidence of the Landlord and accept that a 10 Day Notice was served to the Tenant on May 2, 2019 in accordance with Section 39 of the *Act*.

As stated in Section 39(4) of the *Act*, after receiving a 10 Day Notice, a tenant has 5 days to pay the outstanding rent or to file an application to dispute the notice. I accept the testimony of the Landlord that the outstanding rent has not been paid and I have no evidence before me that the Tenant applied to dispute the notice. Therefore, I find that Section 39(5) of the *Act* applies as follows:

- (5) 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
  - (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 to which the notice relates by that date.

Therefore, pursuant to Section 48(2) of the *Act* I find that the Landlord is entitled to an Order of Possession. As the effective end of tenancy date of the 10 Day Notice has passed, I award the Landlord a two-day Order of Possession.

I also accept the testimony of the Landlord that rent was not paid as due for the months of March, April, May, June and July 2019. As stated in Section 20(1) of the *Act*, a tenant must pay rent as due per the tenancy agreement. As stated in the tenancy agreement, rent is due on or before the first day of each month. I also accept the rent increase

notices that confirm that rent was \$340.00 in March and April 2019 and was increased to \$348.50 beginning in May 2019.

Therefore, I find that the Landlord is entitled to compensation for unpaid rent for the months of March to July 2019. Regarding the late payment fee of \$25.00, I refer to Section 5(1)(d) of the *Manufactured Home Park Tenancy Regulation* which states that a landlord may charge a late payment fee as follows:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent

However, Section 5(2) of the *Regulation* states the following:

(2) A landlord must not charge the fee described in paragraph (1) (d) unless the tenancy agreement provides for that fee.

The Landlord stated that the late rent payment fee is described in the Park Rules and Regulations and did not make reference to this fee being outlined in the tenancy agreement. As such, I do not find that this meets the requirements of the *Regulation* and decline to award any late payment fees.

As the Landlord was successful with the application, pursuant to Section 65 of the *Act*, I award the recovery of the filing fee in the amount of \$100.00. The Landlord is awarded a Monetary Order in the amount outlined below:

March 2019 rent	\$340.00
April 2019 rent	\$340.00
May 2019 rent	\$348.50
June 2019 rent	\$348.50
July 2019 rent	\$348.50
Recovery of filing fee	\$100.00
<b>Total owing to Landlord</b>	<b>\$1,825.50</b>

## Conclusion

Pursuant to Section 48 of the *Act*, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. Should the Tenant fail to

comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

Pursuant to Sections 60 and 65 of the *Act*, I grant the Landlord a **Monetary Order** in the amount of **\$1,825.50** for rent owed for March, April, May, June, and July 2019 as well as for the recovery of the filing fee paid for the Application for Dispute Resolution. The Landlord is provided with this Order 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: July 03, 2019

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Residential Tenancy Branch