



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      FFL, MNDCL, MNDL, MNRL

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution, made on April 16, 2019 (the "Application"). The Landlord applied for the following relief, pursuant to the *Mobile Home Park Tenancy Act* (the "Act"):

- a monetary order for compensation;
- a monetary order for damage;
- a monetary order for unpaid rent and utilities; and
- an order granting recovery of the filing fee.

The hearing was scheduled for 1:30pm on July 26, 2019 as a teleconference hearing. J.P. appeared on behalf of the Landlord and provided affirmed testimony. No one appeared for the Tenant. The conference call line remained open and was monitored for 27 minutes before the call ended. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. During the hearing, I also confirmed from the online teleconference system that J.P. and I were the only persons who had called into this teleconference.

J.P. testified the Application and documentary evidence package was served to the Tenant in person April 26, 2019. Based on the oral and written submissions of the Applicant, and in accordance with Sections 82 and 83 of the *Act*, I find that the Tenant is deemed to have been served with the Application and documentary evidence on April 26, 2019. The Tenant did not submit documentary evidence in response to the Application.

J.P. was given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the

evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issue(s) to be Decided

1. Is the Landlord entitled to a monetary order for compensation, pursuant to Section 60 of the *Act*?
2. Is the Landlord entitled to a monetary order for damage, pursuant to Section 60 of the *Act*?
3. Is the Landlord entitled to a monetary order for unpaid rent or utilities, pursuant to Section 60 of the *Act*?
4. Is the Landlord entitled to return of the filing fee, pursuant to Section 82 of the *Act*?

#### Background and Evidence

J.P. testified that the tenancy began sometime in 2013, however, was unsure as to the exact start date of the tenancy. J.P. stated that the Tenant currently pays a pad fee in the amount of \$459.95 to the Landlord on the first day of each month. J.P. stated that he has served the Tenant with an order of possession from a previous hearing; however, the Tenant continues to occupy his home.

The Landlord is seeking a monetary award for compensation, damage, unpaid rent, as well as unpaid utilities. The Landlord set out his claims on a monetary worksheet which was included in the Application.

The Landlord is seeking \$30,000.00 which is an estimate of the cost associated with removing the Tenant's structure from the mobile home park site. J.P. stated that the Tenant has not yet vacated his home after the Landlord has served the Tenant with an order of possession. J.P. stated that he has not yet incurred this cost; however, did receive several quotes in support of the estimate. J.P. confirmed that the Tenant continues to occupy the home.

The Landlord is also claiming for \$472.50 in relation to an emergency cleaning of the septic tank, as a result of the Tenant not paying for hydro which resulted in the septic pump failing. J.P. stated that the Tenant was warned several times about the importance of maintaining his hydro account as the septic pump needs to be in operation at all times, to prevent a sewage backup. J.P. stated that the Landlord even provided the Tenant with \$72.00 which was an estimate of the cost to operate the septic pump

throughout the year. J.P stated that despite the Landlord's attempts ensure the pump would continue to operate; J.P. stated that the Tenant was unable to maintain the hydro account resulting in the septic pump turning off and the septic system backing up.

J.P stated that the sewage backup impacted two other residents at the site, which required all three tanks to be emptied at a cost of \$472.50. The Landlord submitted a copy of the invoice as well as caution letters to the Tenant in support.

The Landlord is also seeking \$919.90 in unpaid rent. J.P stated that the Tenant has not paid rent for June 2019 in the amount of \$459.95. J.P stated that the Landlord is claiming for August 2019 as well, in anticipation that the Tenant will be unable to pay rent in August 2019.

The Landlord is seeking compensation in the amount of \$53.45 for an unpaid hydro bill. J.P stated that sometime in November 2018, the Landlord assumed the Tenant's hydro account following the backup of the septic system as a result of the Tenant's inability to maintain his hydro account. J.P stated that the parties had agreed that the Landlord would pay the hydro bill each month and then seek reimbursement from the Tenant. J.P stated that currently, the Tenant owes the Landlord \$53.45 for an unpaid hydro bill. The Landlord provided a copy of the bill in support.

If successful, the Landlord is also seeking the return of the filing fee paid to make the Application.

### Analysis

Based on the uncontested affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 60 of the *Act* empowers me to order one party to pay compensation to the other if damage or loss results from a party not complying with the *Act*, regulations or a tenancy agreement.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided for in sections 7 and 67 of the *Act*. An applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;

2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this case, the burden of proof is on the Landlord to prove the existence of the damage or loss, and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did what was reasonable to minimize the damage or losses that were incurred.

The Landlord is seeking \$30,000.00 which is an estimate of the cost associated with removing the Tenant's structure from the mobile home park site. J.P stated that the Tenant has not yet vacated his home after the Landlord has served the Tenant with an order of possession. J.P stated that he has not yet incurred this cost. In this case, I find that the Landlord has provided insufficient evidence to demonstrate that he has incurred a loss as J.P indicated that the home has not yet been removed. As such, I find that this claim is premature; therefore, I dismiss this claim with leave to reapply.

The Landlord is also claiming for \$472.50 in relation to an emergency cleaning of the septic tank, as a result of the Tenant not paying for hydro which resulted in the septic pump failing. In this case, I find that the Tenant was required to maintain hydro to the septic pump to prevent it from backing up. I accept that the Landlord even compensated the Tenant for the estimated cost to run the septic pump throughout the year. I accept that the septic system backed up as a result of the Tenant's inability to maintain hydro to the pump even after receiving several warnings from the Landlord. As such, I find that the Landlord has established an entitlement to \$472.50 to clean out the clogged septic system.

The Landlord is also seeking \$919.90 in unpaid rent. J.P stated that the Tenant has not paid rent when due for June 2019 in the amount of \$459.95. J.P stated that the Landlord is claiming for August 2019 as well in anticipation that the Tenant will be unable to pay. In this case, I am satisfied that the Tenant did not pay rent when due to the Landlord in June 2019.

Section 20 of the *Act* explains that the Tenant must pay rent when it is due under the Tenancy Agreement, whether or not the Landlord complies with this *Act*, the

Regulations or the Tenancy Agreement, unless the Tenant has a right under this Act to deduct all or a portion of the rent. As I do not have any evidence before me that the Tenant had a right under this Act to deduct any of their rent, I find that the Tenant is in breach of Section 20 of the Act.

In light of the above, I find that the Landlord has established an entitlement to monetary compensation in the amount of \$459.95 for unpaid rent in June 2019. The Landlord has also claimed for unpaid rent for August 2019. As August 2019 rent is not yet due to the Landlord, I dismiss this portion of the Landlord's claim with leave to reapply should the Tenant fail to pay rent to the Landlord when due in August 2019.

The Landlord is seeking compensation in the amount of \$53.45 for an unpaid hydro bill. J.P stated that sometime in November 2018, the Landlord assumed the Tenant's hydro account following the backup of the septic system as a result of the Tenant's inability to maintain his hydro account. J.P stated that the Landlord would pay the hydro bill each month and then seek reimbursement from the Tenant. J.P stated that currently, the Tenant owes the Landlord \$53.45 for an unpaid hydro bill.

I find that the Landlord has established an entitlement to monetary compensation in the amount of \$53.45 for the outstanding hydro bill which is owed to the Landlord by the Tenant.

Having been partially successful, I find the Landlord is entitled to recover the \$100.00 filing fee paid to make the Application.

Pursuant to section 60 of the *Act*, I find the Landlord is entitled to a monetary order in the amount of \$1,085.90, which has been calculated as follows:

<b>Claim</b>	<b>Amount</b>
Septic Tank:	\$472.50
Unpaid rent:	\$459.95
Hydro Bill:	53.45
Filing fee:	\$100.00
<b>TOTAL:</b>	<b>\$1,085.90</b>

### Conclusion

The Tenant breached the *Act*. The Landlord is granted a monetary order in the amount of \$1,085.90. This order must be served on the Tenant as soon as possible. If the

Tenant fails to comply the monetary order it 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(1) of the *Manufactured Home Park Tenancy Act*.

Dated: July 29, 2019

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Residential Tenancy Branch