



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GREYCON HOMES LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

OPRM-DR, FFL, CNR, OT, FFT

### **Introduction**

This hearing dealt with cross applications filed by the parties. On July 5, 2019, the Landlord applied for a Direct Request proceeding seeking an Order of Possession for Unpaid Rent pursuant to Section 48 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 to recover the filing fee pursuant to Section 65 of the *Act*. On July 12, 2019, this Application was set down for a participatory hearing on September 5, 2019 at 11:00 AM.

On July 15, 2019, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to Section 48 of the *Act* and seeking to recover the filing fee pursuant to Section 65 of the *Act*. This Application was set down to be heard as a cross application with the Landlord’s Application.

The Landlord attended the hearing with T.W. attending, as well, as an agent for the Landlord. The Tenants did not attend the hearing. All in attendance provided a solemn affirmation.

The Landlord advised that a Notice of Hearing and evidence package was served to each Tenant by registered mail on July 15, 2019 (the registered mail tracking numbers are on the first page of this decision). Based on this testimony and the registered mail tracking history, in accordance with Sections 82 and 83 of the *Act*, I am satisfied that the Tenants were deemed to have received the Landlord’s Notice of Hearing and evidence package five days after they were 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.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an order of possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession for unpaid rent?
- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to recovery of the filing fee?
- Are the Tenants entitled to have the Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Are the Tenants entitled to recovery of 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.

The Landlord stated that the tenancy started on April 18, 2018 and that rent was currently established at \$427.00 per month, due on the first of each month. A security deposit of \$213.50 was also paid. The Landlord submitted a copy of the tenancy agreement as documentary evidence.

He advised that the Tenants did not pay June 2019 rent, so the Notice was served to the Tenants by posting it to their door on June 10, 2019. The Notice indicated that \$427.00 was outstanding on June 1, 2019 and that the effective end date of the Notice was June 22, 2019. The Notice also indicated that \$80.26 was owed on June 1, 2019

for outstanding utilities; however, as a written demand for these utilities was never issued, this claim has been dismissed with leave to reapply.

The Landlord is seeking a monetary award in the amount of **\$1,708.00** for rent arrears for June, July, August, and September 2019 rent.

### 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 Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

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

The undisputed evidence before me is that the Tenants were deemed to have received the Notice on June 13, 2019. According to Section 46(4) of the *Act*, the Tenants have 5 days to pay the overdue rent or to dispute this Notice. Section 46(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 Tuesday June 18, 2019, the Tenants must have paid the rent in full or disputed the Notice by this date at the latest. The undisputed evidence is that the Tenants did not pay the rent and made their Application on July 15, 2019. There is no evidence before me that permitted the Tenants to withhold the rent.

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 Tenants being deemed to have received the Notice. Moreover, the Tenants did not establish that they had a valid reason for withholding the rent pursuant to the *Act*. In addition, the Tenants did not dispute the Notice until July 15, 2019. Ultimately, I am satisfied that the Tenants are conclusively presumed to have accepted the Notice.

As the Landlord's Notice is valid, as I am satisfied that the Notice was served in accordance with Section 81 of the *Act*, and as the Tenants have not complied with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession pursuant to Sections 45 and 48 of the *Act*.

I also find that the Landlord is entitled to a monetary award, and I grant the Landlord a monetary award in the amount of **\$1,708.00**, which is comprised of rent owed for the months of June, July, August, and September 2019.

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. Under the offsetting provisions of Section 65 of the *Act*, I allow the Landlord to keep the security deposit in partial satisfaction of the debts.

As the Tenants were not successful in this application, I find that the Tenants are not entitled to recover the \$100.00 filing fee paid for this application.

Pursuant to Sections 60 and 65 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenants to the Landlord**

June 2019 rent	\$427.00
July 2019 rent	\$427.00
August 2019 rent	\$427.00
September 2019 rent	\$427.00

Security deposit	-\$213.50
Filing fee	\$100.00
<b>TOTAL MONETARY AWARD</b>	<b>\$1,594.50</b>

### Conclusion

I dismiss the Tenants' Application and I grant an Order of Possession to the Landlord **two days after service of this Order** on the Tenants. Should the Tenants 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 **\$1,594.50** in the above terms, and the Tenants must be served with **this Order** as soon as possible. Should the Tenants 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: September 5, 2019

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Residential Tenancy Branch