



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CRYSTAL RIVER COURT LTD. and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

OPR OPC MNRL FFL

### **Introduction**

This hearing dealt with an Application for Dispute Resolution (“application”) under the *Manufactured Home Park Tenancy Act* (“Act”) by the landlord for an order of possession for unpaid/loss of site rent, for an order of possession based on cause, for a monetary order for unpaid site rent, for late fees, and to recover the cost of the filing fee.

An agent for the landlord JN (“agent”), appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

As the tenant did not attend the hearing, service of the Notice of a Dispute Resolution Proceeding (“Notice of Hearing”), application and documentary evidence were considered. The agent testified that the tenant was served with a package that included the Notice of Hearing, application and documentary evidence on August 16, 2019, via registered mail addressed to the tenant at the rental site address. The agent testified that the tenant continues to occupy the rental site. A registered mail tracking number was submitted in evidence, which has been included on the cover page of this decision for ease of reference. The agent stated that the registered mail package was returned as “unclaimed”. According to the online Canada Post registered mail tracking website, the registered mail package was returned to the sender and marked “unclaimed”.

Documents served by registered mail are deemed served five days after they are mailed pursuant to section 83 of the *Act*. Based on the above, I am satisfied that the tenant was deemed served with the Notice of Hearing, application and the documentary evidence as of August 21, 2019. Given the above, I find that this application is undisputed by the tenant. The hearing continued with consideration of the landlord’s application.

### Preliminary and Procedural Matters

The agent testified that in addition to the rent owed for August 2019, the tenant has subsequently not paid the rent for September and October of 2019. As a result, the landlord requested to amend the application to include rent owed for September and October of 2019. The agent also stated that the tenant continues to occupy the rental site. I find that this request to amend the application does not prejudice the respondent tenant as the tenant would be aware or ought to be aware that rent is due pursuant to the tenancy agreement. Therefore, I amend the application pursuant to section 57(3)(c) of the *Act*, from \$452.31 to \$1,356.90, which consists of \$452.30 in unpaid rent or loss of rent for August, September and October of 2019.

Although the agent requested late fees totaling \$75.00 during the hearing, I note the landlord did not apply for those late fees, and did not amend their application to include late fees. I also note that the Monetary Order Worksheet does not change a monetary claim, and does not take the place of submitting an Amendment under the *Act* and serving an amendment under the *Act*. Also, I note the tenancy agreement submitted does not include a term specifying late fees or an agreed-upon amount for late payments of rent.

In addition, the agent confirmed their email address at the outset of the hearing and stated that they understood that the decision and any applicable orders would be emailed to them. As the landlord did not have an email address for the tenant, the decision will be emailed to the tenant.

### Issues to be Decided

- Is the landlord entitled to an order of possession under the *Act*?
- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- Is the landlord entitled to the recovery of the cost of the filing fee under the *Act*?

### Background and Evidence

The tenancy agreement was submitted in evidence. A month to month tenancy began on what the agent stated was approximately April 7, 2004. I note that the tenancy agreement was missing the start date. The agent stated that monthly site rent is currently \$452.30 per month and due on the first day of each month.

The agent confirmed service of 3 10 Day Notices for Unpaid Rent or Utilities. For the purposes of this hearing, I will only deal with the first 10 Day Notice issued dated August 2, 2019 ("10 Day Notice"). The agent testified that the 10 Day Notice was posted to the tenant's door on August 2, 2019 and indicated that \$452.30 in site rent was due August 1, 2019. The 10 Day Notice listed an effective vacancy date of August 12, 2019. The agent stated that the tenant failed to pay any rent for the months of August, September and October 2019. The agent stated that the tenant did not dispute the 10 Day Notice.

The agent stated that the tenant owes \$452.30 for the months of August, September and October 2019 for unpaid rent and loss of rent. The landlord is also seeking the recovery of the cost of the filing fee.

I do not find it necessary to consider the other two 10 Day Notices or the 1 Month Notice to End Tenancy for Cause as the undisputed 10 Day Notice before me, has ended the tenancy by operation of section 39 of the *Act*, which will be described further below.

### Analysis

Based on the undisputed documentary evidence and the undisputed testimony provided during the hearing, and on the balance of probabilities, I find the following.

**Order of Possession** – I accept the undisputed testimony of the agent and I find that the tenant failed to pay the site rent for the month of August 2019 as claimed or dispute the 10 Day Notice within 5 days after receiving the 10 Day Notice. As a result, the tenant is conclusively presumed pursuant to section 39 of the *Act*, to have accepted that the tenancy ended on the effective vacancy date of the 10 Day Notice, which automatically correct under section 46 of the *Act* to August 15, 2019 as the 10 Day Notice was posted to the tenant's door on August 2, 2019, and section 83 of the *Act* states that documents served by posting to the door are deemed served three days after they are posted. Accordingly, I grant the landlord an order of possession **effective two (2) days** after service on the tenant. I find the tenancy ended on August 15, 2019.

**Claim for unpaid site rent and loss of rent** – I accept the agent's undisputed testimony that site rent of \$452.30 for the month of August 2019 were not paid by the tenant and that the landlord has also suffered a loss of September and October 2019 rent. Pursuant to section 20 of the *Act*, a tenant must pay site rent when it is due in accordance with the tenancy agreement. Based on the above, I find that the tenant has failed to comply with a standard term of the tenancy agreement, which stipulates that site rent is due monthly on the first of each month. The rental site continues to be occupied as a manufactured home remains on the rental site. The landlord will not regain possession of the unit until the site has been vacated. Based on the above, I find the landlord has established a monetary claim of **\$1,356.90** comprised of unpaid site rent and loss of site rent as claimed.

As the landlord has succeeded with their application, I grant the landlord the recovery of the **\$100.00** filing fee.

**Monetary Order** – I grant the landlord a monetary order pursuant to section 60 of the *Act* in the amount of \$1,456.90 as described above. This amount is comprised of unpaid site rent, loss of site rent, and the filing fee.

### Conclusion

The landlord's claim is mostly successful, with the exception of late fees verbally requested by the agent, which I have addressed above. The tenancy ended on August 15, 2019 and the tenant has been over-holding the rental site since that date.

The landlord has been granted an order of possession effective two (2) days after service on the tenant. This order must be served on the tenant and may be enforced in the Supreme Court of British Columbia.

The landlord has been granted a monetary order under section 60 of the *Act* in the amount of \$1,456.90. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision will be emailed to the landlord and sent by regular mail to the tenant.

The monetary order and the order of possession will be emailed to the landlord for service on the tenant.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 10, 2019

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Residential Tenancy Branch