



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution (the Application) that was filed by the Landlords under the Manufactured Home Park Tenancy Act (the Act), seeking:

- An Order of Possession;
- Recovery of unpaid rent and utilities; and
- Recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the Landlords, who provided affirmed testimony. No one appeared on behalf of the Tenant. The Landlords were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the Rules of Procedure) state that the respondent must be served with a copy of the Application and Notice of Hearing. As neither the Tenant nor an agent for the Tenant attended the hearing, I confirmed service of these documents as explained below.

The Landlords testified that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application and the Notice of Hearing, and their documentary evidence, was sent to the Tenant at the manufactured home site address, by registered mail, on October 20, 2020, the day after the Notice of Dispute Resolution Proceeding Package became available to them from the Residential Tenancy Branch (the Branch) on October 19, 2020. The Landlords provided me with the registered mail receipt, which includes the tracking number, and a copy of the registered mail envelope showing that the recipient was the Tenant and listing the dispute address as the delivery address.

The Canada Post website confirms that the registered mail was sent as described above and refused by the recipient October 22, 2020.

Residential Tenancy Policy Guideline (the Policy Guideline) 12 states that where a document is served by registered mail, the refusal of the party to accept or pick up the registered mail, does not override the deeming provision. Where the registered mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing. Based on the uncontested testimony of the Landlords and the documentary evidence before me, I am satisfied that the Notice of Dispute Resolution Proceeding Package, including a copy of the Application, the Notice of Hearing and the documentary evidence before me from the Landlords was sent by registered mail to the Tenant at the manufacture home site address rented to them under the tenancy agreement on October 20, 2020, and refused by them on October 22, 2020. Pursuant to section 83(a) of the Act and Policy Guideline 12, I deem the Tenant served with the above noted documents on October 25, 2020, five days after they were sent by registered mail.

I verified that the hearing detail shown on the Notice of Hearing document were correct and based on the above and pursuant to rule 7.3 of the Rules of Procedure the hearing therefore proceeded as scheduled despite the absence of the Tenant.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant and determinative facts, evidence and issues in this decision.

At the request of the Landlords, copies of the decision and any orders issued in their favor will be emailed to them at the email address provided in the Application.

#### Issue(s) to be Decided

Are the Landlords entitled to an Order of Possession?

Are the Landlords entitled to recovery of unpaid rent and utilities?

Are the Landlords entitled to recovery of the filing fee?

### Background and Evidence

The Landlord stated that rent in the amount of \$11.00 per day is due each month under the tenancy agreement, calculated at the start of each rental period, and due on the first day of each month, as set out in a previous decision from the Branch on September 22, 2020. The Landlord also stated that utilities are also due each month in addition to the above noted rent.

The Landlords stated that the Tenant did not pay \$330.00 in rent as required on September 1, 2020, and as a result a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the 10 Day Notice) was served on September 21, 2020, by posting a copy to the door of the mobile home. The Landlords submitted a witnessed and signed proof of service document indicating that the 10 Day Notice was served in the manner described above, as well as photographs showing the 10 Day Notice posted to the door of the mobile home and the Tenant removing the 10 Day Notice from the door.

The 10 Day Notice in the documentary evidence before me, signed and dated September 21, 2020, has an effective date of October 2, 2020, and states that it was served because the Tenant failed to pay \$330.00 in rent due on September 1, 2020.

The Landlords stated that the Tenant has not paid any rent or utilities since the 10 Day Notice was served or disputed the 10 Day Notice but continues to occupy the manufactured home site. The Landlords stated that as rent for September has already been dealt with as part of a previous dispute, the Tenant currently owes only \$341.00 in rent for October and \$330.00 for November, plus \$119.08 in outstanding utilities.

The Landlords submitted photographs, the 10 Day Notice, a copy of correspondence sent to the Tenant regarding rent arrears, and a copy of a Monetary Order from the Branch dated September 22, 2020.

The Landlords sought an Order of Possession as soon as possible, recovery of the unpaid rent and utilities, and recovery of the filing fee.

No one appeared on behalf of the Tenant to provide any evidence or testimony for my consideration, despite my finding earlier in this decision that they were deemed served with a copy of the Application, the Notice of Hearing, and the documentary evidence before me from the Landlords on October 25, 2020.

### Analysis

In a decision dated September 22, 2020, a previous arbitrator found that rent in the amount of \$11.00 per day is due each month under the tenancy agreement, calculated at the being of each rental period, and due on the first day of each month. I am therefore satisfied that rent in the amount of \$330.00 was due on September 1, 2020, under the tenancy agreement. Based on the Landlords' affirmed and uncontested testimony, I am also satisfied that utilities in the amount of \$119.08 are due and remain unpaid.

Based on the affirmed and uncontested testimony of the Landlords, I am satisfied that the Tenant failed to pay \$330.00 in rent on September 1, 2020, as required, and that the 10 Day Notice in the documentary evidence before me was therefore posted to the door of the mobile home located on the manufactured home site rented to the Tenant under the tenancy agreement on September 21, 2020, and received by them that same date.

Section 39(1) of the Act states that that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 39(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 manufactured home site to which the notice relates by that date.

Based on the Landlords' affirmed and uncontested testimony I am satisfied that the \$330.00 due in accordance with the 10 Day Notice remains unpaid, and as there is no evidence before me that the Tenant disputed the 10 Day Notice within the prescribed period set out under section 39(4) of the Act, I therefore find that the Tenant is conclusively presumed, pursuant to section 39(5) of the Act to have accepted that the tenancy was ending on October 2, 2020, the effective date of the 10 Day Notice, and was required to vacate the mobile home site by that date.

As I am satisfied that the 10 Day Notice complies with section 45 of the Act, I therefore grant the Landlords an Order of Possession for the manufactured home site pursuant to section 48(2)(b) of the Act. As the effective date of the 10 Day Notice has passed, I grant this Order of Possession effective two days after service on the Tenant.

I award the Landlords \$22.00 in unpaid rent due for October 1, 2020 – October 2, 2020, and \$119.08 in unpaid utilities. I am also satisfied that the Tenant is overholding the manufactured home site pursuant to section 50 of the Act, and I therefore award the Landlords per diem overholding rent in the amount of \$539.00, calculated at \$11.00 per day for the period of October 3, 2020 – November 20, 2020. The Landlord's remain at liberty to seek compensation from the Branch for any rent subsequently accrued and unpaid by the Tenant after the date of this decision, should they wish to do so.

Pursuant to section 65(1) of the Act, I also grant the Landlords recovery of the \$100.00 filing fee. Pursuant to section 60 of the Act, I therefore grant the Landlords a Monetary Order in the amount of \$780.08 and I order the Tenant to pay this amount to the Landlords.

### Conclusion

Pursuant to section 60 of the Act, I grant the Landlords a Monetary Order in the amount of **\$780.08**. The Landlords are 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 order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from them by the Landlords.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: November 20, 2020

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Residential Tenancy Branch