



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lombardy Management Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, FFL

### Introduction

The landlord filed an Application for Dispute Resolution (the “Application”) on November 30, 2020 seeking an order of possession for the rental unit, and to recover the filing fee for the Application. The matter proceeded by way of a hearing pursuant to section 67(2) of the *Manufactured Home Park Tenancy Act* (the “Act”) on February 22, 2021. In the conference call hearing I explained the process and provided the attending party the opportunity to ask questions.

The landlord attended the telephone conference all hearing; the tenant did not attend.

To proceed with this hearing, I must be satisfied that the landlord made reasonable attempts to serve the tenant with this Notice of Dispute Resolution Proceeding. This means the landlord must provide proof that the document has been served at a verified address allowed under Section 82 of the *Act*, and I must accept that evidence.

The agent gave testimony that the address they provided on the registered mail package was that of the manufactured home site, still occupied by the tenant at the time of its mailing. They provided a Canada Post registered mail tracking number. They also gave an account of the movement of the mail: it was posted via registered mail on December 8; refused by the tenant on December 23; then returned to the sender on December 29.

I accept the landlord’s undisputed evidence that the tracking history showed that the tenant refused the registered mail package; therefore, I find they avoided service.

Based on the submissions of the landlord, I accept the tenant was served notice of this hearing and the landlord's application in a manner complying with section 82(1)(c) of the *Act*, and the hearing proceeded in the tenant's absence.

#### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent pursuant to sections 39 and 48 of the *Act*?

Is the landlord entitled to recover the filing fee for this Application pursuant to section 65 of the *Act*?

#### Background and Evidence

I have reviewed all written submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlords applied for an order of possession pursuant to the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") they gave to the tenant on November 4, 2020.

The landlords submitted that the tenancy agreement, as it stands, is not set out in a single document with that pertinent information. This is due to the tenant taking over possession from a family member in 2015. The landlord provided in the hearing that the tenant would not sign a tenancy agreement and their written evidence provides that "She refused to sign a Tenancy Agreement saying that one is not needed as she is the owner."

The rent amounts increased from 2015 through to 2020 to the current amount of \$384, payable on the first day of each month. The landlord stated the tenant knew of rent amounts and the payment schedule because they had abided by this agreement for a few years prior to 2020. The landlord provided ledgers of the rent paid from 2015 through to June 2020. From March 2020 onwards, the tenant was behind in paying rent. The landlord issued four 10-Day Notices throughout 2020.

The landlord served the 10-Day Notice in this dispute for lack of rent payment. The ledger the landlord provided for the year 2020 shows delayed payments, partial payments, and no payments for certain months. The 10-Day Notice indicates the amount of rent owing on November 1 was \$2,732.

The landlord confirmed that after the service of the 10-Day Notice on the rental unit door, the tenant did not make any rent payments and did not communicate with the landlord.

### Analysis

I have reviewed all documentary evidence and in accordance with sections 81 and 83 of the *Act*, I find that the tenants were deemed served with the 10 Day Notice on November 7, 2020, three days after the landlords placed it in the tenant's rental unit door.

I accept the evidence before me that the tenants have failed to pay the rent owed in full by November 12, 2020, within five days granted under section 39(4) of the *Act* and did not dispute the 10 Day Notice within that five-day period.

Based on the foregoing, I find that the tenant is conclusively presumed under sections 39(5) of the *Act* to have accepted that the tenancy ended on November 12, 2020. I find delayed payments in the form of e-transfers and cheques written beyond the five-day period do not cancel or nullify the conclusive presumption.

The *Act* section 45 provides:

In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the manufactured home site,
- (c) state the effective date of the notice,
- (d) . . . state the grounds for ending the tenancy,  
    . . . and
- (e) when given by a landlord, be in the approved form.

I find the One Month Notice bears sufficient detail as to comply with the requirements of section 45 regarding form and content. The pertinent details of the end-of-tenancy date and the date of issue are provided. As such, I find the tenant was aware of the reasons for the landlord issuing the One Month Notice on November 4, 2020.

I find the landlords are entitled to an Order of Possession. As the landlords are successful in this application, I find the landlords are entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

Under section 48(3) of the *Act*, I grant an Order of Possession effective two days after its service by the landlord 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 section 65 of the *Act*, I grant the landlord a Monetary Order in the amount of \$100 for recovery of the filing fee for this hearing application. The landlord is provided with this Order in the above terms and the tenants 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: February 22, 2021

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Residential Tenancy Branch