



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPR-DR, OPRM-DR

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution ("Application") under the *Manufactured Home Park Tenancy Act* ("Act"), for an order of possession for unpaid rent, with a request for a monetary order of \$2,475.00 for outstanding unpaid rent from the Tenant.

The Landlord and the Landlord's spouse, C.K., appeared at the teleconference hearing and gave affirmed testimony. No one attended on behalf of the Tenant. The teleconference phone line remained open for over 15 minutes and was monitored throughout this time. The only persons to call into the hearing were the Landlord and his spouse, who indicated that they were ready to proceed. I confirmed that the teleconference codes provided to the Parties were correct and that the only persons on the call, besides me, were the Landlord and his spouse.

I explained the hearing process to the Landlords and gave them an opportunity to ask questions about the hearing process. During the hearing the Landlord was given the opportunity to provide his evidence orally and to respond to my questions. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As the Tenant did not attend the hearing, I considered service of the Notice of Dispute Resolution Hearing. Section 52 of the Act and Rule 3.1 state that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing. The Landlord testified that he served the Tenant with the Notice of Hearing documents by Canada Post registered mail, sent on January 16, 2021. The Landlord provided a Canada Post tracking number as evidence of service.

The Landlord said that the Tenant did not pick up his registered mail; however, according to RTB Policy Guideline 12, "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.” Accordingly, I find the Landlord served the Notice of Hearing documents on the Tenant pursuant to the Act. I, therefore, admitted the Application and evidentiary documents, and I continued to hear from the Landlord in the absence of the Tenant.

### Preliminary and Procedural Matters

The Landlord provided the Parties’ email addresses in the Application and confirmed these addresses in the hearing. He also confirmed his understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

The Landlord said that when he applied for dispute resolution, the Tenant owed him \$2,475.00 in unpaid pad rent. However, as of the hearing date, he said the rent debt had grown to \$3,300.00. The Landlord requested that his Application for a monetary order be increased to this amount to reflect the changing amount of this debt.

Pursuant to Rule 4.2 and section 64(3)(c ) of the Act, I amend the Application for dispute resolution to correct the amount of the monetary order sought, reflecting the ongoing failure of the Tenant to pay his monthly rent owing. I find no prejudice to the Tenant, as he is aware of how much rent he has or has not paid, so he could have anticipated that the Landlord would claim reimbursement for the full amount of rent owing. Accordingly, after adjusting for the time delay since the Landlord applied for dispute resolution, I find it reasonable to amend the amount of the monetary order sought by the Landlord from the Tenant from \$2,475.00 to \$3,300.00.

### Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order, and if so, in what amount?
- Is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Landlord confirmed that the Tenant rents a pad for his manufactured home in a manufactured home trailer park. The Landlord said that the periodic tenancy began on January 1, 2016, with a (current) monthly pad rent of \$275.00, due on the first day of each month.

In the hearing, the Landlord said:

The rent is derelict, and getting to be such an amount, it seems unlikely that the Tenant can come up with that sort of money. There have been many, many promises made. He now lives in another mobile home. . . I'd be happy if someone just paid us, but that is unlikely. I tried to ask him if he can pay in part. They once asked us if we had found the money they had left for us in the barbecue – on their property.

The Landlord explained that the Tenant had not paid rent from August 1, 2019 through February 2020, and then no rent was paid from November 2020 through April 2021. However, the Landlord said that the Tenant paid rent for January 2021. As such, the Landlord claims that as of the hearing date, the Tenant owed him \$3,300.00 in rent.

The Landlord said that the Tenant's daughter moved into the trailer in January 2021 and paid rent for that month, but nothing has been paid since then. The Landlord seeks an order of possession and a monetary order for unpaid rent.

### Analysis

Based on the documentary evidence and testimony before me for consideration, and pursuant to section 83 of the Act, I find that the Tenant was deemed served with the One Month Notice on December 6, 2020, five days after it was sent by registered mail.

Section 40(5) of the Act states that if a tenant who has received a One Month Notice does not apply for dispute resolution within 10 days after the date the tenant receives the notice, 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 by that date.

As there is no evidence before me that the Tenant disputed the One Month Notice, I find that he is conclusively presumed under section 40(5) of the Act to have accepted the One Month Notice, and I find that the tenancy, therefore, ended on January 31, 2021.

As a result, I find that the Tenant is overholding at the site, and the Landlord is therefore entitled to an Order of Possession pursuant to section 48(2)(b) of the Act. As the corrected effective date has passed and the Agent testified that rent for the months noted above have not been paid, the Order of Possession will therefore be **effective two days after service** on the Tenant.

Section 20 of the Act states: "A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the 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.” There is no evidence before me that the Tenant had a right to deduct any portion of the rent from the monthly pad rent due to the Landlord. Pursuant to sections 20 and 60 of the Act, I award the Landlord a Monetary Order of **\$3,300.00** from the Tenant in recovery of the unpaid rent.

### Conclusion

Pursuant to section 48 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is 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 Supreme Court of British Columbia and enforced as an Order of that Court.

Pursuant to section 60 of the Act, I grant the Landlord a Monetary Order in the amount of \$3,300.00. The Landlord is 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 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: April 14, 2021

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Residential Tenancy Branch