



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **OPR, FFL**

### Introduction

The hearing was convened as a result of the Landlord's application under the *Manufactured Home Park Tenancy Act* (the "Act") for:

- an Order of Possession pursuant to section 48(3) of the Act; and
- authorization to recover the filing for the Landlord's application from the Tenant pursuant to section 65(1) of the Act.

The Tenant did not attend this hearing scheduled for 9:30 am. I left the teleconference hearing connection open for the entire hearing, which ended at 10:04 am, in order to enable the Tenant to call into this teleconference hearing. The Landlord's agents ("KH", "SH" and "JC") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that KH, SH and JC and I were the only ones who had called into this teleconference.

SH testified that the Notice of Dispute Resolution Proceeding and the Landlord's evidence ("NOH Package") was served on the Tenant by registered mail on October 28, 2021. SH submitted a registered mail receipt and tracking number of the NOH Package to corroborate her testimony. I find that the NOH Package was served on the Tenant in accordance with sections 81 and 82 of the Act.

SH stated that a revised monetary order worksheet was served in-person on the Tenant on November 15, 2021. I find, based on SH's undisputed testimony, that the Tenant was served with the Landlord's additional evidence in accordance with section 81 of the Act.

SH stated that the Tenant did not serve any evidence on the Landlord.

Preliminary Matter – Effect of Non-Attendance by Tenant

Rules 6.6 and 7.4 of the *Residential Tenancy Branch Rules of Procedure* (“RoP”) state:

**6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is on the person making the application. However, in some situations the arbitrator may determine the onus is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the Landlord bears the evidentiary burden to prove it is more likely than not that the 10 Day Notice for Unpaid Rent and/or Utilities dated October 3, 2021 (“10 Day Notice”) is valid. The Landlord must meet this burden even if the Tenant does not attend the hearing.

**7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party’s agent.

If a party or their agent does not attend the hearing to present evidence, any written submission supplied may or may not be considered.

As such, I will not consider any evidence submitted by the Tenant in advance of the hearing when adjudicating the Landlord’s application.

Preliminary Issue – Amendment to Include Monetary Claim for Unpaid Rent

At the hearing SH stated that the Tenant has not paid the rent for November and December 2021 in addition to the rental arrears set out in the 10 Day Notice. SH stated the Landlord is seeking to recover rental arrears owing by the Tenant for July to December 2021 inclusive. Accordingly, an amendment to the Landlord's application is necessary in order for the Landlord to seek recovery of those rental arrears.

Rule of Procedure 4.2 of the RoP states:

**4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served.

I find that a claim for recovery by the Landlord's for all of the rental arrears arising for the period July through December 2021 inclusive should have been reasonably anticipated by the Tenant. Therefore, pursuant to Rule 4.2, I order that the Landlord's application be amended to include a claim for unpaid rent for July through December 2021 inclusive for a total of \$2,040.00.

Issues to be Decided

Is the Landlord entitled to:

- an Order of Possession?
- recovery of the unpaid rent?
- To recover the filing fee for this application from the Tenant?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or

arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Landlord's application and my findings are set out below.

SH submitted a copy of the month-to-month manufactured home site agreement. SH testified the tenancy commenced on September 1, 2016 with rent of \$300.00 payable on the 1<sup>st</sup> of each month. SH submitted a copy of a Notice of Rent Increase dated October 21, 2018 that increased the rent to \$315.00 per month commencing on February 1, 2021. SH testified the Tenant has not paid the rent from July to December 2021 inclusive.

SH submitted a copy of the Landlord's Park Regulations and testified that section 1 of the Regulation provides that a tenant is required to pay a late fee of \$40.00. SH stated that the Landlord recently became aware section 5(1)(d) of the *Manufactured Home Park Tenancy Regulation* provides the maximum late fee a landlord may charge for late payment fees is \$25.00 for each occurrence. Accordingly, SH stated that Landlord is only claiming a late fee of only \$25 for each late payment for the months of July through to December 2021 inclusive.

SH testified the Landlord served the 10 Day Notice by posting it on the Tenant's door on October 3, 2021. SH submitted a completed Proof of Service on Form RTB-34 to corroborate her testimony. Pursuant to section 83 of the Act, the Tenant was deemed to have been served with the 10 Day Notice on October 6, 2021. SH stated that the Tenant has not vacated the home site. SH testified the Landlord was unaware of the Tenant having made any application for dispute resolution to dispute the 10 Day Notice.

SH testified the Tenant is in rental arrears from July through to December 2021 inclusive as follows:

Date	Rent Owed	Late Fee	Paid	Balance
01-Jul-21	\$315.00	\$25.00	\$0.00	\$340.00
01-Aug-21	\$315.00	\$25.00	\$0.00	\$680.00
01-Sep-21	\$315.00	\$25.00	\$0.00	\$1,020.00
01-Oct-21	\$315.00	\$25.00	\$0.00	\$1,360.00
01-Nov-21	\$315.00	\$25.00	\$0.00	\$1,700.00
01-Dec-21	\$315.00	\$25.00	\$0.00	\$2,040.00
<b>Total</b>	<b>\$1,890.00</b>	<b>\$150.00</b>	<b>\$0.00</b>	<b>\$2,040.00</b>

SH testified that the Tenant has been late paying the rent 22 times since the tenancy commenced. SH submitted a letter dated July 25, 2021 and testified the Landlord served it on the Tenant which stated:

Dear [Tenant]

This notice serves as an invoice as there is an outstanding balance of \$355.00 accrued from missed payments of July rent and late payment fees (\$315 + \$40).

**Action:**

Please have the outstanding amount cleared on or before July 30, 2021 or we will issue 10 day Notice to End Tenancy Contract.

From that point on, all rent must be paid on time.

Regards

[Signed]  
S&H's Holdings

Analysis

**1. Order of Possession**

Subsection 39(4) of the Act states:

- 39(4) Within 5 days after receiving a notice under this section, the tenant may
- (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.

The 10 Day Notice was served on the Tenant's door on October 3, 2021. Pursuant to section 83, the Tenant was deemed to have received the 10 Day Notice on October 6, 2021. Pursuant to section 46(4) of the Act, the Tenant had until October 12, being the next business day after October 11, 2021 to either pay the rental arrears or make an application for dispute resolution to dispute the 10 Day Notice. I find the Tenant did not pay the rental arrears owing as of the date of the 10 Day Notice within the five-day dispute period. There is no evidence the Tenant made an application for dispute resolution to dispute the 10 Day Notice within the five-day dispute period.

Section 39(5) of the Act states:

- 39(5) 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
- (a) *is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice*, and
  - (b) must vacate the rental unit to which the notice relates by that date.

[emphasis in italics added]

In the present case, the Tenant did not make an application for dispute resolution to dispute the 10 Day Notice. Accordingly, the Tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the 10 Day Notice, being October 14, 2021.

The Landlord admitted that the Tenant had been late paying the rent on numerous occasions prior to service of the 10 Day Notice. This raises the issue of whether the Landlord is estopped from serving the Tenant with the 10 Day Notice for late payment of rent. Before considering whether the Landlord is entitled to an Order of Possession, I will consider whether the Landlord was estopped from serving the 10 Day Notice on the Tenant.

The legal concept of estoppel has been addressed in a recent decision of the B.C. Supreme Court, *Guevara v. Louie*, 2020 BCSC 380. The presiding Judge, the Honourable Mr. Justice Sewell, wrote as follows:

[62] ... Therefore, the proper question was whether Ms. Louie could rely on past instances of rent not being paid on the first of the month to terminate the tenancy agreement when for years she had acquiesced in the manner that rent was paid. Specifically, had Ms. Louie represented through her conduct and communications that she did not require strict compliance with the term of the tenancy agreement stating that rent must be paid on the first day of the month.

[63] While the legal test of waiver requires a "clear intention" to "forgo" the exercise of a contractual right, the equitable principle of estoppel applies where a person with a formal right "represents that those rights will be compromised or varied:" *Tymchuk v. D.L.B. Properties*, [2000 SKQB 155](#) at paras. [11-17](#). Unlike waiver, the principle of estoppel does not require a reliance on unequivocal conduct, but rather "whether the conduct, when viewed through the eyes of the party raising the doctrine, was such as would reasonably lead that person to rely

upon it." *Bowen v. O'Brien Financial Corp.*, [1991 CanIII 826 \(BC CA\)](#), [1991] B.C.J. No. 3690 (C.A.)...

[65] The following broad concept of estoppel, as described by Lord Denning in *Amalgamated Investment & Property Co. (In Liquidation) v. Texas Commerce International Bank Ltd.* (1981), [1982] Q.B. 84 (Eng. C.A.), at p. 122, was adopted by the Supreme Court of Canada in *Ryan v. Moore*, [2005 SEC 38](#) at para. [51](#):

... When the parties to a transaction proceed on the basis of an underlying assumption - either of fact or of law - whether due to misrepresentation or mistake makes no difference - on which they have conducted the dealings between them - neither of them will be allowed to go back on that assumption when it would be unfair or unjust to allow him to do so. If one of them does seek to go back on it, the courts will give the other such remedy as the equity of the case demands.

[66] The concept of estoppel was also described by the British Columbia Court of Appeal in *Litwin Construction (1973) Ltd. v. Pan* [1988 CanIII 174 \(BC CA\)](#), [1998] 29 B.C.L.R. (2d) 88 (C.A.), 52 D.L.R. (4th) 459, more recently cited with approval in *Desbiens v. Smith*, [2010 BCCA 394](#):

... it would be unreasonable for a party to be permitted to deny that which, knowingly or unknowingly, he has allowed or encouraged another to assume to his detriment ..." [emphasis added]. That statement was affirmed by the English Court of Appeal in *Habib Bank* and, as we read the decision, accepted by that Court in *Peyman v. Lanjani*, [1984], 3 All E.R. 703 at pp. 721 and 725 (Stephenson L.J.), p. 731 (May L.J.) and p. 735 (Slade L.J.).

[67] ... I find that Ms. Louie was required to give the Ms. Guevara reasonable notice that strict compliance would be enforced, before taking steps to terminate the residency for late payment. Such notice was not provided.

[68] Estoppel has been a fundamental principle of the law for a long time: see *Hughes v. Metropolitan Railway Co.* (1877), 2 App. Cas. 439. However, the Arbitrator failed to address this fundamental principle in his reasons. By so doing he deprived Ms. Guevara of the right to show that in the circumstances of the application before him it would have been unjust to permit Ms. Louie to terminate the tenancy agreement given the long course of conduct in which she acquiesced.

In the *Guevara v. Louie* case referred to above, the landlord's acquiescence accepting late payments from the tenant had occurred over a period of years. In this application, the undisputed testimony of SH was that the Tenant has been late on numerous occasions since the tenancy commenced on September 1, 2016. However, SH provided undisputed testimony that the Landlord served the Tenant with a warning letter on July 25, 2021 whereby the Landlord unequivocally stated "all rent must be paid on time". Accordingly, I

find the Landlord gave written notice to the Tenant that all rent must be paid on time and, therefore, the doctrine of estoppel does not apply in these circumstances.

I find that Landlord's 10 Day Notice meets the form and content requirements of section 45 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the rental unit and the effective date of the notice.

Section 48(2) of the *Act* states:

48(2) A landlord may request an order of possession of a manufactured home site in any of the following circumstances by making an application for dispute resolution:

- (a) a notice to end the tenancy has been given by the tenant;
  - (b) *a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;*
  - (c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 89 (2) (a.1), requires the tenant to vacate the manufactured home site at the end of the term;
  - (c.1) the tenancy agreement is a sublease agreement;
  - (d) the landlord and tenant have agreed in writing that the tenancy is ended.
- (3) The director may grant an order of possession before or after the date when a tenant is required to vacate a manufactured home site, and the order takes effect on the date specified in the order.
- (4) *In the circumstances described in subsection (2) (b), the director may, without any further dispute resolution process under Part 6 [Resolving Disputes],*
- (a) *grant an order of possession to the landlord, and*
  - (b) *if the application is in relation to the non-payment of rent, grant an order requiring payment of that rent.*



[emphasis in italics added]

Pursuant to section 48(3) of the Act, the Landlord is granted an Order of Possession effective two days after service of the Order on the Tenant by the Landlord.

## **2. Monetary Order for Unpaid Rent:**

Section 26 of the Act states:

- 20 (1)** A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this 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.

The Act provides very limited and specific circumstances when a tenant may withhold rent such as: (i) where a tenant has previously overpaid the rent (ii) where authorization has been given by the landlord or an arbitrator or (iii) where the landlord does not reimburse the tenant for emergency repairs that have been made by the tenant.

I find that monthly rent is \$315.00 and is due on the first of the month and that a late fee of \$25.00 is payable by the Tenant for each month the Tenant was late paying the rent. The Tenant did not attend the hearing to provide testimony or submit evidence as to why he was excused, pursuant to any provisions of the Act, from paying the rent. I accept the Landlord's undisputed testimony the Tenant did not pay any rent for the months of July to December 2021. As such, I find that the Tenant is \$1,890.00 in total arrears as calculated above and owes late payment fees of \$150.00. The Tenant must compensate the Landlord these amounts. Pursuant to section 48(4)(b), I order the Tenant to pay the Landlord \$1,890.00 in satisfaction of the arrears owed.

As the Landlord has been successful in its application, it may recover the filing fee for its application from the Tenant pursuant to section 65(1) of the Act.

Conclusion:

Pursuant to section 48(4)(a) of the Act, I order the Tenant deliver vacant possession of the rental unit to the Landlord within two days of being served with a copy of this decision and attached order by the Landlord. Should the Tenant or anyone on the premises 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 48(4)(b) of the Act, I order that the Tenant pay the Landlord \$2,140.00, representing the following:

Description	Amount
Rental Arrears for July to December 2021	\$2,040.00
Landlord's Filing Fee for Application	\$100.00
<b>Total</b>	<b>\$2,140.00</b>

This Monetary Order must be served by the Landlord on the Tenant and may be enforced in Provincial 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: December 23, 2021

---

Residential Tenancy Branch