



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, MNRL, FFL

### Introduction

On September 22, 2021, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent and Utilities (the “Notice”) pursuant to Section 39 of the *Manufactured Home Park Tenancy Act* (the “Act”), seeking a Monetary Order for compensation pursuant to Section 60 of the *Act*, and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

R.L. attended the hearing as an agent for the Landlord; however, the Tenant did not attend the hearing at any point during the 15-minute teleconference. At the outset of the hearing, I informed R.L. that recording of the hearing was prohibited and he was reminded to refrain from doing so. He acknowledged this term, and he provided a solemn affirmation.

He advised that the Notice of Hearing and evidence package was served to the Tenant by registered mail on September 29, 2021 (the registered mail tracking number is noted on the first page of this Decision). He stated that this package was returned to sender. Based on this undisputed evidence, and in accordance with Sections 82 and 83 of the *Act*, I am satisfied that the Tenant has been deemed to have received the Landlord’s Notice of Hearing and evidence package. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to an Order of Possession?
- Is the Landlord entitled to a Monetary Order for compensation?
- Is the Landlord entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

R.L. advised that the tenancy started sometime prior to April 2017, and he inherited this tenancy in October 2018. He stated that he was not provided with a copy of a written tenancy agreement by the original landlord. He indicated that the rent was established at an amount of \$355.00 per month and that it was due on the first day of each month.

He testified that the 10 Day Notice to End Tenancy for Unpaid Rent and Utilities was served to the Tenant on September 8, 2021 by being posted to the Tenant's door, and he included a signed proof of service form to corroborate service upon the Tenant.

He stated that the Tenant did not pay any rent for July, August, or September 2021. Thus, the Notice was served for rent owing on September 1, 2021 in the amount of \$1,065.00. He referenced documentary evidence submitted to support this position.

He then advised that the Tenant did not pay any rent for the subsequent months. However, on January 31, 2022, the Tenant e-transferred the Landlord rent in the amount \$2,830.00 to cover the rental arrears of July 2021 to February 2022. He submitted that the Tenant was then mailed a letter, on February 3, 2022, stating that the funds that were transferred were accepted for use and occupancy only.

As the Tenant has not complied with the *Act*, the Landlord is seeking an Order of Possession. He stated that the Landlord is no longer seeking a Monetary Order as the Tenant has paid the arrears to date.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the

following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 45 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

When reviewing this Notice, I am satisfied that it is a valid Notice.

Section 20 of the *Act* states that rent must be paid by the Tenant when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenant has a right to deduct all or a portion of the rent. Should the Tenant not pay the rent when it is due, Section 39 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid Rent. Once this Notice is received, the Tenant would have five days to pay the rent in full or to dispute the Notice. If the Tenant does not do either, the Tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the Notice, and the Tenant must vacate the rental unit.

The undisputed evidence before me is that the Tenant would have been deemed to have received the Notice on September 11, 2021. According to Section 39(4) of the *Act*, the Tenant then had 5 days to pay the overdue rent and/or utilities or to dispute this 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 rental unit to which the notice relates by that date."*

As the Notice was deemed received on September 11, 2021, the Tenant must have paid the rent in full or disputed the Notice by September 16, 2021 at the latest. The undisputed evidence is that the Tenant did not pay the rent in full or dispute this Notice. As there is no evidence before me that the Tenant had a valid reason under the *Act* for withholding the rent, I am satisfied that she breached the *Act* and jeopardized her tenancy.

As the Landlord's Notice for unpaid rent is valid, as I am satisfied that the Notice was served in accordance with Section 81 of the *Act*, and as the Tenant has not complied

with the *Act*, I uphold the Notice and find that the Landlord is entitled to an Order of Possession for unpaid rent pursuant to Sections 39 and 48 of the *Act*. Given that the Landlord issued a receipt for use and occupancy only, I find that the Landlord has not reinstated the tenancy. As such, I grant the Landlord an Order of Possession that takes effect **two days** after service of this Order on the Tenant.

As the Tenant has paid the rental arrears in full, the Landlord's claim for a Monetary Order is dismissed without leave to reapply.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

### Conclusion

Based on the above, I grant an Order of Possession to the Landlords effective **two days after service of this Order** 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.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$100.00** 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 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 4, 2022

---

Residential Tenancy Branch