



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes OPR-DR, FFL

### Introduction

This matter commenced by way of an ex parte Direct Request Proceeding pursuant to the Manufactured Home Park Tenancy Act (the Act), which dealt with an Application for Dispute Resolution filed by the Landlords for:

- an order of possession based on an undisputed 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated October 5, 2021 (the 10 Day Notice); and
- an order granting recovery of the filing fee.

However, in a written decision dated February 7, 2022, an adjudicator found there were inconsistencies in the Landlords' evidence that could not be resolved in a Direct Request Proceeding. As a result, the Direct Request Proceeding was adjourned to a participatory hearing.

The Landlords and the Tenant attended the participatory hearing on May 3, 2022 and provided affirmed testimony.

During the hearing, the Landlords testified that the Notice of Dispute Resolution Proceeding and supporting evidence was served on the Tenant by email and by registered mail on February 11, 2022. The Tenant acknowledged receipt.

The Tenant testified that his responsive documentary evidence was served on the Landlords by email and by registered mail. The Landlords acknowledged receipt.

No issues were raised with respect to service and receipt of the above documents during the hearing. Pursuant to section 64 of the Act, I find the above documents were sufficiently served for the purposes of the Act.

The parties were advised that Rule of Procedure 6.11 prohibits the recording of dispute resolution hearings.

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

### Issues to be Decided

1. Are the Landlords entitled to an order of possession for unpaid rent pursuant to sections 39 and 48 of the Act?
2. Are the Landlords entitled to recover the filing fee for this application pursuant to section 65 of the Act?

### Background and Evidence

The Tenant resides in a manufactured home park. The Landlords are the current owners of the manufactured home park. The parties agreed the tenancy commenced on August 1, 2003. At that time, pad rent of \$210.00 per month was due on the first day of each month. However, the Landlords testified that rent has increased over the course of the tenancy and that the Tenant paid pad rent of \$347.34 per month to December 31, 2021. As of January 1, 2022, pad rent increased to \$353.68 per month. The Tenant agreed rent was due in these amounts.

The Landlords testified the Tenant did not pay rent when due on October 1, 2021. Accordingly, the Landlords issued a 10 Day Notice for unpaid rent of \$347.34. A copy of the 10 Day Notice was submitted into evidence.

The 10 Day Notice is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

The Landlords testified that the 10 Day Notice was served on the Tenant by email on October 5, 2021. The Landlords submitted a Proof of Service Notice to End Tenancy document which confirms service in this manner and indicates this document was served on the Tenant by email at an address provided for service of documents. The Landlords submitted a copy of an email from the Tenant dated September 27, 2021, requesting that notices be directed to the email address provided. The Landlords also submitted a copy of an email to the Tenant dated October 5, 2021, and the Tenant's response acknowledging that rent was outstanding on October 6, 2021.

According to the Landlord, the Tenant did not pay any rent until October 27, 2021, at which time the Tenant paid \$719.68 for rent due on October 1 and November 1, 2021, plus a \$25.00 late payment charge.

The Landlords testified that rent has been received on time ever since but that receipts have been issued for use and occupancy only.

In reply, the Tenant acknowledged rent was late as claimed by the Landlords. He testified that it was "entirely my fault" due to his financial circumstances at the time. However, the Tenant testified that the payment of \$719.68 might have been made on October 22, 2021. The Tenant also testified there has been an "ongoing issue" with the Landlords since the Covid-19 pandemic, and that this is not an isolated incident. The Tenant asserted that the Landlords have harassed the Tenant to get possession of the rental pad.

The Landlords disputed the Tenant's claims.

### Analysis

Based on the affirmed oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 20 of the Act confirms a tenant must pay rent when due whether or not the landlord complies with the Act, the Manufactured Home Park Tenancy Regulation, or the tenancy agreement, unless the tenant has a right under the Act to deduct all or a portion of the rent.

Section 39 of the Act permits a landlord to take steps to end a tenancy when rent remains unpaid on any day after the day it is due by giving notice to end the tenancy.

In this case, I find the 10 Day Notice was received by the Tenant by October 6, 2021. However, I find that the Tenant did not pay rent in full or dispute the 10 Day Notice within 5 days after receipt, in accordance with section 39(4) of the Act. Further, although I accept that the Landlords gave the Tenant an extension to October 13, 2021 to pay rent, I am satisfied the Tenant did not pay rent in full until October 27, 2021, more than five days after the end of the extension.

Therefore, pursuant to section 39(5) of the Act, I find the Tenant is conclusively presumed to have accepted that the tenancy has ended and must vacate the manufactured home site. As a result, I find the Landlords are entitled to an order of possession which will be effective on May 31, 2022, at 1:00 p.m.

Having been successful, I also grant the Landlords a monetary award of \$100.00 in recovery of the filing fee.

### Conclusion

The Landlords are granted an order of possession which will be effective on May 31, 2022, at 1:00 p.m. The order of possession may be filed in and enforced as an order of the Supreme Court of British Columbia.

The Landlords are granted a monetary order in the amount of \$100.00 in recovery of the filing fee. The monetary order may be filed in and enforced as an order of the Provincial Court of British Columbia (Small Claims).

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: May 3, 2022

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Residential Tenancy Branch