

## **DECISION**

### **Introduction**

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This matter proceeded by way of an *ex parte* Direct Request Proceeding, pursuant to section 48(4) of the *Manufactured Home Park Tenancy Act* (the "Act"), and dealt with the landlord's Application for Dispute Resolution (Application) for:

- an Order of Possession based on unpaid rent pursuant to sections 39 and 48 of the Act
- a Monetary Order for unpaid rent pursuant to section 60 of the Act (\$2,178.98)
- authorization to recover the filing fee for this application from the tenant pursuant to section 65 of the Act (\$100.00)

### **Service of Notice of Dispute Resolution Proceeding - Direct Request**

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The landlord submitted a signed Proof of Service Landlord's Notice of Direct Request Proceeding which declares that the tenant was served with the Notice of Dispute Resolution Proceeding - Direct Request (Proceeding Package) in accordance with section 82 of the Act. The applicant provided a copy of the Canada Post Customer Receipt containing the tracking number to confirm this service. Based on the written submissions of the landlord and in accordance with section 83 of the Act:

- I find that Tenant A.C.T. was served on October 7, 2022, by registered mail, and is deemed to have received the Proceeding Package on October 12, 2022, the fifth day after the registered mailing.

### **Issue(s) to be decided**

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Is the landlord entitled to an Order of Possession based on unpaid rent?

Is the landlord entitled to a Monetary Order for unpaid rent? (\$2,178.98)

Is the landlord entitled to recover the filing fee for this application from the tenant?  
(\$100.00)

## Background and Evidence

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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.

The landlord submitted the following evidentiary material:

- A copy of a residential tenancy agreement which was signed by the landlord and the tenant on September 4, 2018, indicating a monthly rent of \$1,004.41, due on the first day of the month for a tenancy commencing on September 17, 2018;
- A copy of two Notice of Rent Increase forms showing the rent being increased from \$1,042.41 to the monthly rent amount of \$1,089.49
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) dated August 25, 2022, for \$2,178.98 in unpaid rent. The 10 Day Notice provides that the tenant had five days from the date of service to pay the rent in full or apply for Dispute Resolution or the tenancy would end on the stated effective vacancy date of September 5, 2022;
- A copy of a Proof of Service Notice to End Tenancy form which indicates that the 10 Day Notice was sent to the tenant by registered mail at 10:58 am on August 26, 2022;
- A copy of a Canada Post Customer Receipt containing the tracking number to confirm the 10 Day Notice was sent to the tenant on August 26, 2022;
- A Direct Request Worksheet showing the rent owing and paid during the relevant portion of this tenancy.

## Analysis

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### **Is the landlord entitled to an Order of Possession based on unpaid rent?**

Section 39 of the Act requires that upon receipt of a 10 Day Notice the tenant must, within five days, either pay the full amount of the arrears as indicated on the 10 Day Notice or dispute the 10 Day Notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not pay the arrears or dispute the 10 Day Notice they are conclusively presumed to have accepted the end of the tenancy pursuant to section 39(5) of the Act.

I have reviewed all documentary evidence and in accordance with sections 81 and 83 of the Act, I find that the 10 Day Notice was served on August 26, 2022 and is deemed to have been received by the tenant on August 31, 2022, five days after its registered mailing.

I accept the evidence before me that the tenant has failed to pay the rent owed in full within the 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) and 46(2) of the Act to have accepted that the tenancy ended on the corrected effective date of the 10 Day Notice, September 10, 2022.

Therefore, I find that the landlord is entitled to an Order of Possession based on unpaid rent pursuant to sections 39 and 48 of the Act.

### **Is the landlord entitled to a Monetary Order for unpaid rent?**

Section 20 of the Act requires a tenant to pay rent to the landlord, regardless of whether the landlord complies with the Act, regulations or tenancy agreement, unless the tenant has a right to deduct all or a portion of rent under the Act.

I note that the amount of rent listed the tenancy agreement (\$1,004.41) does not match the starting rent on the Notice of Rent Increase (\$1,042.41). I find the landlord included a \$38.00 electricity charge in the rent increase calculation.

I also note the Act establishes that a landlord must not impose a rent increase for at least 12 months after

- the date on which the tenant's rent was first established or
- the effective date of the last rent increase

The rent in the tenancy agreement was established on September 17, 2018. However, the Notice of Rent Increase issued in 2019 was effective on July 1, 2019, before twelve months had passed.

I find I am not able to confirm the amount of the monthly rent and for this reason, the landlord's application for a Monetary Order for unpaid rent, pursuant to section 60 of the Act, is dismissed with leave to reapply.

### **Is the landlord entitled to recover the filing fee for this application from the tenant?**

As the landlord was partially successful in their application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application, pursuant to section 65 of the Act.

## Conclusion

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I grant an Order of Possession to the landlord **effective two (2) days after service of this Order on the tenant**. 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.

I grant the landlord a Monetary Order in the amount of \$100.00 for the recovery of the filing fee for this application. 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.

I dismiss the landlord's application for a Monetary Order for unpaid rent with leave to reapply.

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: November 15, 2022

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Residential Tenancy Branch