



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding GREEN MOUNTAIN HOLDINGS  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR MNR FF

### Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held, via teleconference, on April 28, 2023. The Landlord applied for the following relief, pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"):

- an order of possession for unpaid rent or utilities; and,
- a monetary order for unpaid rent or utilities.

The Landlord (two agents of) provided affirmed testimony at the hearing. There was no one present at the hearing on behalf of the Tenant.

The Landlord testified that the Tenant has passed away, and her affairs are currently managed by the Public Guardian and Trustee (PGT) office in Vancouver. The Landlord stated that the PGT was helping the Tenant pay her rent before her passing. Then, once the Tenant passed away, the Landlord reached out to the PGT and confirmed that they are still the personal representative for the Tenant's estate. The Landlords stated that they served the Notice of Dispute Resolution Proceeding and evidence package to the Tenant's personal representative at the PGT on November 17, 2022, in person. I find the Tenant was sufficiently served this same day the package was delivered to the personal representative managing her estate.

The Landlord has requested to amend the application to include rent that has accrued since the original application date. I turn to the following Rules of Procedure (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.

In consideration of this, I allow the Landlord to amend their application to include rent that has accrued since the original application date.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Issues to be Decided

1. Is the Landlord entitled to an order of possession for unpaid rent or utilities?
2. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

#### Background and Evidence

The Landlord testified that pad rent, in the amount of \$540.00, is due on the first day of each month. The Tenancy Agreement specifies that a \$25.00 late fee is payable if rent is not paid on time each month.

The Landlord testified that the Tenant stopped paying rent in January 2020, and no rent has been paid since that time. The Landlord stated that the PGT was paying rent up until that time, but starting in 2020, they stopped paying. Then, the Tenant passed away in December 2021, and the Landlord stated that rent continued to be unpaid. The Landlord stated that the Tenant's nurse has been residing in the rental unit ever since the Tenant began to have health issues at the end of her life. The Landlord stated that they never authorized this person to occupy the home site, nor did they ever sign a tenancy agreement with anyone else. The Landlord asserts the current resident is merely an occupant who has not been paying them any rent directly.

The Landlord stated that the Tenant's son was leading them along for some time, saying he would pay off the rent, but he has disappeared, which is why it has taken so long to pursue this eviction. The Landlord personally gave the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the Tenant's personal representative at the PGT on October 25, 2022. This individual signed the proof of service document

provided into evidence. The amount noted on the 10 Day Notice was \$18,750.00, as of September 1, 2022 (no rent paid since January 2020). No rent has been paid since the Notice was issued, and the Landlord stated that the balance is now \$22,705.00 up to and including April 2023.

### Analysis

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

Section 20 of the *Act* confirms that a tenant must pay rent when it is due unless the tenant has a right under the *Act* to deduct all or a portion of rent. When a tenant does not pay rent when due, section 39 of the *Act* permits a landlord to end the tenancy by issuing a notice to end tenancy. A tenant who receives a notice to end tenancy under this section has five days, under section 39(4) of the *Act*, after receipt to either pay rent in full or dispute the notice by filing an application for dispute resolution. When a tenant does not pay rent in full or dispute the notice, the tenant is conclusively presumed to have accepted the tenancy ends on the effective date of the notice, as per section 39(5) of the *Act*.

In this case, I find that the tenant owed \$18,750.00 in past due rent at the time the 10 Day Notice was issued on October 25, 2022. The Landlord served the 10 Day Notice to the Tenant by serving it to the Tenant's personal representative at the PGT on October 25, 2022. I find the Tenant (agent of) received the 10 Day Notice on this date.

The tenant, or agent of, had 5 days to pay rent in full or file an application for dispute resolution. I find no evidence that the Tenant, or agent of, did either. As such, I find the tenant is conclusively presumed to have accepted the end of the tenancy, on the effective date of the notice. The Landlord is entitled to an order of possession, which will be effective two (2) days after it is served on the Tenant's representative at the PGT.

Next, I turn to the Landlord's request for a Monetary Order for unpaid rent. After considering the evidence before me, as summarized in the chart above, I find there is sufficient evidence before me to demonstrate that the tenant owes and have failed to pay \$22,705.00 in past due rent.

Pursuant to section 65, I also award the recovery of the filing fee paid.

### Conclusion

The landlord is granted an order of possession effective **two days after service** on the tenant's representative. If the tenant fails to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be enforced as an order of that Court.

The landlord is granted a monetary order pursuant to Section 60 in the amount of \$22,805.00 comprised of rent owed. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 3, 2023

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Residential Tenancy Branch