



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

The Landlords seeks the following relief under the *Manufactured Home Park Tenancy Act* (the “Act”):

- an order of possession pursuant to s. 48 after issuing a 10-Day Notice to End Tenancy signed on March 2, 2023 (the “10-Day Notice”);
- a monetary order pursuant to s. 60 for unpaid rent; and
- return of the filing fee pursuant to s. 65.

The Landlords’ application was originally filed as a direct request application but was scheduled for hearing following interim reasons issued on April 13, 2023.

G.D. appeared as the Landlord and was represented by R.D., who spoke on his behalf. L.D. also appeared with the Landlord, though provided no submissions.

The parties affirmed to tell the truth during the hearing. I advised of Rule 6.11 of the Rules of Procedure, in which the participants are prohibited from recording the hearing. I further advised that the hearing was recorded automatically by the Residential Tenancy Branch.

The tenant is named as an estate. I am told by R.D. that the tenant passed away in December 2022.

### Preliminary Issue – Service of Documents

Policy Guideline #12 provides guidance with respect to the service of documents and specifies that when a respondent is deceased, the personal representative for the deceased’s estate should be named and served.

In this instance, I am told by R.D. that the manufactured home in question is occupied by the deceased's daughter and that all the relevant documents were sent to the manufactured home directly. I am further told that the Landlords have reached out to the deceased's son and spoken to him about this matter.

According to the Landlord and R.D., the manufactured home is registered in the name of the deceased and another individual, D.T.. I am told that D.T. is the deceased's former spouse who had passed away approximately seven years ago. R.D. says that the deceased does not appear to have a will and that neither the deceased's daughter who occupies the manufactured home nor the deceased's son have identified if there was a personal representative for the estate.

Under these circumstances, it appears likely that there is no will and, as a result, no personal representative appointed by a will to administer the estate. I also accept that there likely has not been a grant of administration. I note that s. 130 of the *Wills, Estates and Succession Act*, SBC 2009, c 13 governs priority of applicants for grants of administration when an individual is an intestate. Specifically, it gives priority to a deceased's spouse, then the child of the deceased provided that that child has the consent of a majority of the deceased's children.

I am satisfied that the Landlords have notified the deceased's daughter and son and that there is no surviving spouse, such that the children are best placed to administer the estate. Indeed, the daughter lives within the manufactured home and I am told by R.D. that one of the registered mail packages was picked up after it had been sent to the manufactured home, such that I presume the daughter retrieved it.

Turning back to the issue of service, the interim reasons note that the application and evidence were served via registered mail on March 27, 2023. I accept that this was proper service on the estate and find that pursuant to s. 64(2) of the *Act* that the estate was sufficiently served.

The interim reasons outline that the Landlords were to serve the interim reasons and the notice of reconvened hearing on the estate. R.D. advise that these documents were sent to the manufactured home on April 14, 2023. I accept that the Landlords have served these documents on the estate and find that pursuant to s. 64(2) of the *Act* that the estate was sufficiently served.

### Issues to be Decided

- 1) Is the Landlord entitled to an order of possession?
- 2) Is the Landlord entitled to an order for unpaid rent?
- 3) Is the Landlord entitled to its filing fee?

### Evidence and Analysis

The parties were given an opportunity to present evidence and make submissions. I have reviewed all included written and oral evidence provided to me by the parties and I have considered all applicable sections of the *Act*. However, only the evidence and issues relevant to the claims in dispute will be referenced in this decision.

R.D. confirms the following details with respect to the tenancy:

- The deceased tenant began renting the manufactured home site on September 1, 2007.
- Rent of \$560.40 is due on the first of each month.

I am provided with a copy of the tenancy agreement, though it is unsigned by the deceased, it was signed by her co-tenant and former spouse, D.T..

#### *Order of Possession*

Under s. 48(2) of the *Act*, a landlord may apply for an order of possession where a notice to end tenancy has been given and not disputed and the time for filing that dispute has expired.

I am advised that the 10-Day Notice was posted to the door of the manufactured home on March 2, 2023. I find that this was done in accordance with s. 81 of the *Act* and find that pursuant to s. 64(2) of the *Act* that the estate was sufficiently served. Pursuant to s. 83 of the *Act*, I deem that the estate received the 10-Day Notice on March 5, 2023.

R.D. confirmed that the estate did not file a dispute of the 10-Day Notice nor were the arrears for rent listed within the notice paid. Accordingly, I find that the estate is conclusively presumed to have accepted the end of the tenancy pursuant to s. 39(5) of the *Act*.

I grant the Landlords an order of possession pursuant to s. 48 of the *Act* effective two days after it is served on the estate.

### *Monetary Order for Unpaid Rent*

Under s. 60 of the *Act*, the Director may order that a party compensate the other if damage or loss result from that party's failure to comply with the *Act*, the regulations, or the tenancy agreement. Policy Guideline #16 sets out that to establish a monetary claim, the arbitrator must determine whether:

1. A party to the tenancy agreement has failed to comply with the *Act*, the regulations, or the tenancy agreement.
2. Loss or damage has resulted from this non-compliance.
3. The party who suffered the damage or loss can prove the amount of or value of the damage or loss.
4. The party who suffered the damage or loss mitigated their damages.

The applicant seeking a monetary award bears the burden of proving their claim.

In this instance, R.D. advises that rent had not been paid for March 2023, April 2023, and May 2023. I accept the undisputed evidence from the Landlords that this is the case. I find that the estate has breached the tenancy agreement and s. 20(1) of the *Act* resulting in financial loss to the Landlords that could not have been mitigated as the manufactured home site is still occupied. I draw no distinction between the obligation to pay rent under the tenancy agreement and compensation in lieu of rent during the overholding period. I find that the loss for the overholding period is equivalent to rent payable under the tenancy agreement.

Accordingly, I grant the Landlords a monetary order for unpaid rent of \$1,681.20 (\$560.40 x 3).

I also grant the Landlords their filing fee as they were successful in their application. The estate shall also pay \$100.00 to the Landlords pursuant to s. 65 of the *Act*.

### Conclusion

I grant the Landlords an order of possession pursuant to s. 48 of the *Act*, which shall be effective **two (2) days** after it is received by the estate.

I grant the Landlords an order for unpaid rent pursuant to s. 60 of the *Act* totalling \$1,681.20.

I also grant the Landlords their \$100.00 filing fee pursuant to s. 65 of the *Act*.

Combined, I order the estate pay **\$1,781.20** to the Landlords.

It is the Landlords' obligation to serve these orders on the estate. If the estate does not comply with the monetary order, it may be filed by the Landlords with the Small Claims Division of the Provincial Court and enforced as an order of that Court. If the estate does not comply with the order of possession, it may be filed by the Landlords with the Supreme Court of British Columbia 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: May 18, 2023

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Residential Tenancy Branch