



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DAWSON & SAWYER CAPITAL INVESTMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR, FF

### Introduction

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* ("the Act") for an Order of Possession for Unpaid Rent pursuant to section 39; and authorization to recover the filing fee for this application from the tenant pursuant to section 65.

The tenant did not attend this hearing, although I waited until 9:45 am in order to enable the tenant to connect with this teleconference hearing scheduled for 9:30 am. The landlords and landlords' agent attended the hearing and was given a full opportunity to be heard, to present sworn testimony, and to make submissions.

Landlord PM testified that he served the tenant with the 10 Day Notice to End Tenancy ("10 Day Notice") on August 3, 2016 by posting it on the tenant's door. The landlord's agent testified that, at that time, the tenant continued to reside in the rental unit.

I find that the landlord's 10 Day Notice was sufficiently served in accordance with section 82(2) and 83 of the Act. Landlord PM testified that the landlord's Application for Dispute Resolution ("ADR") was served to the tenant by posting it on the tenant's door on August 25, 2016. Landlord MR testified that he witnessed the service. I find that the tenant was deemed served with the landlord's ADR with Notice of Hearing on August 28, 2016 – 3 days after its posting.

### Issue(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?  
Is the landlord entitled to recover the filing fee for this application?

### Background and Evidence

The landlord's agent testified that the current landlord purchased the residential property in July 2016 and they have limited records with respect to the history of the manufacture home park tenancies. He testified that the tenant's rental amount is \$692.00 payable on the first of each month. He testified that the tenant did not pay rent in August 2016, the first month that the new/current landlords were accepting payment. The landlord sought an Order of Possession for the rental unit.

The landlord submitted documentary evidence including records documenting the service of documents to the tenant as well as a log of rental payments by the tenants of the manufactured home park site. Under the tenant's name, there is an indication of the tenant's rental amount and a blank space under "amount collected". Other tenants' rental payments are listed as received on the same document.

The landlord's agent testified that he has canvassed the tenant's neighbours and he believes the tenant may have vacated the rental unit on or about September 1, 2016. After issuing a 10 Day Notice to End Tenancy on August 3, 2016, the landlord applied for an Order of Possession for unpaid rent for the month of August 2016. The landlord testified that the tenant did not pay rent of \$692.00 due on August 1, 2016 and has not paid rent for September or October 2016. He testified that the tenant provided no notice that he intended to end the tenancy or vacate the residence. He testified that the tenant still has a myriad of belongings in the rental unit.

### Analysis

Based on the sworn, undisputed evidence of the landlord and his agent, the tenant failed to pay the August 2016 rent within five days of receiving the 10 Day Notice to End Tenancy. The tenant has not made an application pursuant to section 39(4) of the *Act* within five days of receiving the 10 Day Notice. In accordance with section 39(5) of the *Act*, the tenant's failure to take either of these actions within five days led to the end of his tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by August 13, 2016. As that has not occurred, I find that the landlord is entitled to a 2 day Order of Possession.

I note that the landlord's agent testified that the landlord is not certain whether the tenant continues to reside in the site as of the date of this hearing. He testified that items belonging to the tenant remain in the manufactured home site but that they have canvassed neighbours and been advised that the tenant has not been seen for approximately one month. At the conclusion of this decision, I provide for the landlord's information the provisions of the *Act* that address abandonment.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application. I issue a monetary order against the tenant for \$100.00.

### Conclusion

I grant the landlord an Order of Possession to be effective two days after notice is served to the tenant. If the tenant does not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

I issue a monetary order to the landlord in the amount of \$100.00.

The landlord is provided with these Orders in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: October 19, 2016

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Residential Tenancy Branch

I provide the following sections of the *Manufactured Home Park Tenancy Act* for the information of the landlords,

### **Landlord's right to enter manufactured home site restricted**

**23** A landlord must not enter a manufactured home site that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

- (c) the landlord has an order of the director authorizing the entry;
- (d) the tenant has abandoned the site;
- (e) an emergency exists and the entry is necessary to protect life or property;
- (f) the entry is for the purpose of collecting rent or giving or serving a document that under this Act must be given or served.

### **Abandonment of personal property**

**34** (1) A landlord may consider that a tenant has abandoned personal property if

- (a) the tenant leaves the personal property on a manufactured home site that he or she has vacated after the tenancy agreement has ended, or
- (b) subject to subsection (2), the tenant leaves the personal property on a manufactured home site
  - (i) that, for a continuous period of one month, the tenant has not ordinarily occupied and for which he or she has not paid rent, or
  - (ii) from which the tenant has removed substantially all of his or her personal property.

(2) The landlord is entitled to consider the circumstances described in paragraph (1) (b) as abandonment only if

- (a) the landlord receives an express oral or written notice of the tenant's intention not to return to the manufactured home site, or
- (b) the circumstances surrounding the giving up of the manufactured home site are such that the tenant could not reasonably be expected to return to the manufactured home site.

(3) If personal property is abandoned as described in subsections (1) and (2), the landlord may remove the personal property from the manufactured home site, and on removal must deal with it in accordance with this Part.

(4) Subsection (3) does not apply if a landlord and tenant have made an express agreement to the contrary respecting the storage of personal property.

### **Landlord's obligations**

**35** (1) The landlord must

- (a) store the tenant's personal property in a safe place and manner for a period of not less than 60 days following the date of removal,
  - (b) keep a written inventory of the property,
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- (c) keep particulars of the disposition of the property for 2 years following the date of disposition, and
  - (d) advise a tenant or a tenant's representative who requests the information either that the property is stored or that it has been disposed of.
- (2) Despite paragraph (1) (a), the landlord may dispose of the property in a commercially reasonable manner if the landlord reasonably believes that
  - (a) the property has a total market value of less than \$500,
  - (b) the cost of removing, storing and selling the property would be more than the proceeds of its sale, or
  - (c) the storage of the property would be unsanitary or unsafe.
- (3) A court may, on application, determine the value of the property for the purposes of subsection (2).

### **... Landlord's duty of care**

- 40** When dealing with a tenant's personal property under this Part, a landlord must exercise reasonable care and caution required by the nature of the property and the circumstances to ensure that the property does not deteriorate and is not damaged, lost or stolen as a result of an inappropriate method of removal or an unsuitable place of storage.
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