



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPRM-DR, FFL

### Introduction

This hearing dealt with an Application for Dispute Resolution by Direct Request that was scheduled as a participatory hearing. The Landlord filed under the *Manufactured Home Park Tenancy Act* (the “Act”), for a Monetary Order for unpaid rent and utilities, an Order of Possession, and recovery of the filing fee.

The hearing was convened by telephone conference call and was attended by the agent for the Landlord (the “Agent”) and the owner of the Mobile Home Park, both of whom provided affirmed testimony. The Tenant did not attend. The Agent and the owner were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

The Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”) state that the respondent must be served with a copy of the Application and Notice of Hearing. As the Tenant did not attend the hearing, I confirmed service of these documents as explained below.

The Agent testified that the Application, the Notice of Hearing and the Documentary evidence before me from the Landlord were personally served on the Tenant on August 2, 2018. As a result of the above and in the absence of any evidence to the contrary, I find that the Tenant was personally served the above noted documents on August 2, 2018.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Rules of Procedure; however, I refer only to the relevant facts and issues in this decision.

At the request of the Agent, copies of the decision and any orders issued in favor of the Landlord will be e-mailed to her at the e-mail address confirmed in the hearing.

Preliminary Matters

**Preliminary Matter #1**

At the outset of the hearing I identified that the landlord listed on the Application is different from the landlord listed in the tenancy agreement before me. The tenancy agreement states that the landlord is a numbered company and the owner of that numbered company, A.A., appeared in the hearing. A.A. testified that the numbered company is the owner of the Manufactured Home Park and that at the time the tenancy agreement was signed, it was signed between the Tenant and the numbered company. However, the owner testified that since that time, the landlord listed in the Application, R.C.R., was retained to act as the agent for the numbered company. The Agent testified that R.C.R. now acts as the landlord and conducts all business for the owner. As a result, the owner and the Agent requested that the decision and all orders issued in favor of the landlord be issued in the name of R.C.R.

Section 1 of the *Act* includes in the definition of a landlord, the owner's agent, or another person who, on behalf of the landlord, permits occupation of the manufactured home site under a tenancy agreement. Based on the testimony provided by the owner and the Agent in the hearing, I find that the applicant listed as the landlord on the Application, R.C.R., therefore meets the definition of a landlord under the *Act*. As a result, R.C.R. will be referred to as the "Landlord" throughout this decision.

**Preliminary Matter #2**

Although the Application was filed under the *Manufactured Home Park Tenancy Act*, the tenancy agreement in the documentary evidence before me suggested that the tenancy might actually be a residential tenancy pursuant to the *Residential Tenancy Act*. In the hearing the Agent confirmed that the Tenant owns their mobile home and simply rents the mobile home pad. As a result, I am satisfied that the Application has been correctly filed under the Manufactured Home Park Tenancy Act.

**Preliminary Matter #3**

The Agent testified that since filing the Application, the amount of outstanding rent and utilities has increased to \$2,200.00. Rule 4.2 of the Rules of Procedure states that the Application may be amended in the hearing in circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the date the Application was filed. As the Tenant owes a set amount for utilities each month, I also

find it reasonable to amend the application to include the increased amount of utilities owed. The Application was therefore amended pursuant to the *Act* and the Rules of Procedure to reflect that the Landlord is seeking \$2,200.00 in outstanding rent and utilities.

#### Issue(s) to be Decided

Is the Landlord entitled to an Order of Possession pursuant to section 48 of the *Act*?

Is the Landlord entitled to compensation for unpaid rent and utilities pursuant to section 60 of the *Act*?

Is the Landlord entitled to recovery of the filing fee pursuant to section 65 of the *Act*?

#### Background and Evidence

The tenancy agreement in the documentary evidence before me states that rent in the amount of \$500.00 is due on the first day of each month, plus \$50.00 for electricity. Although the tenancy agreement states that no security or pet damage deposit are owed, the ledger submitted by the Landlord in the documentary evidence before me shows that a \$250.00 security deposit was collected and the Agent confirmed that this is correct.

The Agent stated that the Tenant did not pay the rent and utilities as required for June or July of 2018, and as a result, a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "10 Day Notice") was personally served on the Tenant on July 10, 2018. In support of this testimony the Agent provided a witnessed and signed Proof of Service document indicating that the 10 Day Notice was served as described above.

The 10 Day Notice in the documentary evidence before me, signed and dated July 10, 2018, has an effective vacancy date of July 24, 2018, and states that as of July 1, 2018, the Tenant owed \$1,100.00 in outstanding rent.

The Agent testified that the Tenant's mobile home remains in the mobile home site and that no rent has been paid since the service of the 10 Day Notice. As a result, the Agent stated that the Tenant currently owes \$2,200.00 in outstanding rent and utilities for June, July, August and September of 2018.

The Tenant did not appear in the hearing to provide any evidence or testimony for my consideration.

### Analysis

Based on the documentary evidence before me and the testimony provided in the hearing, I find that the 10 Day Notice was personally served on the Tenant on July 10, 2018. I also find that the Tenant was obligated to pay \$500.00 in rent and \$50.00 for electricity on the first day of each month.

Section 39(1) of the *Act* states that a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving a notice to end tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice. Section 39(5) also states that if a tenant who has received a notice under section 39 does not pay the rent or make an application for dispute resolution within five days after receiving the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the manufactured home site to which the notice relates by that date.

There is no evidence before me that the Tenant filed an application seeking to dispute the 10 Day Notice and I accept the Agent's undisputed and affirmed testimony that no rent has been paid since the 10 Day Notice was served. As a result, I find that the Tenant is conclusively presumed, pursuant to section 39(5) of the *Act* to have accepted the 10 Day Notice and the end of the tenancy on July 24, 2018. As a result, I find that the tenancy actually ended on July 24, 2018, and that the Tenant is currently overholding the mobile home site. As a result, the Landlord is entitled to an Order of Possession pursuant to section 48(2)(b) of the *Act*. As the effective date of the notice has passed and the Tenant has not paid rent in several months, I find that the Order of Possession will be effective two days after service on the Tenant.

Although the Landlord sought \$2,200.00 in unpaid rent and utilities, the Agent confirmed that a \$250.00 security deposit was paid by the Tenant. Section 17 of the *Act* states that a landlord must not require or accept a security deposit in respect of a manufactured home site tenancy and that if a landlord accepts a security deposit, the tenant may deduct the amount of the deposit from rent. Further to this, I have already found above that the Tenancy ended on July 24, 2018, and that the Tenant is therefore overholding the mobile home site. Section 50 of the *Act* states that a landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the manufactured home site after the tenancy is ended. As a result, I find that

the Landlord is only entitled to rent in the amount of \$16.67 for each day that the Tenant has overheld the rental unit in September (\$500.00/30 days). As a result, I find that the Tenant only owes \$333.40 in rent for September as of today's date, plus \$50.00 in utilities. As the Tenant remained in the rental unit for the entire month of June, July, and August and did not pay any rent, The Tenant also owes \$1,650.00 in rent and utilities for those months, less the \$250.00 unlawfully collected for a security deposit.

Based on the above, I find that the Tenant currently owes \$1,733.40 in outstanding rent and utilities. Further to this, I find that the Landlord is also entitled to recovery of the \$100.00 filing fee pursuant to section 72 of the *Act*. As a result, the Landlord is therefore entitled to a Monetary Order in the amount of \$1,833.40.

The Landlord remains at liberty to file a subsequent application in the future seeking any unpaid rent or loss of rent suffered after September 20, 2018, should they wish to do so.

### Conclusion

Pursuant to section 60 of the *Act*, I grant the Landlord a Monetary Order in the amount of \$1,833.40. 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.

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: September 20, 2018

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Residential Tenancy Branch