



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0921903 B.C. Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, FF

### Introduction

This hearing was convened as a result of the landlord's application for dispute resolution under the Manufactured Home Park Tenancy Act (Act). The landlord applied for:

- an order of possession of the manufactured home site pursuant to a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (Notice) issued to the tenant; and
- for recovery of the filing fee paid for this application.

This matter began as an application via the ex-parte, non-participatory Direct Request process and was adjourned to a participatory hearing based on the Interim Decision of an adjudicator for the Residential Tenancy Branch (RTB), dated November 26, 2020, which should be read in conjunction with this decision.

At the participatory hearing, two of the landlord's shareholders (landlords) attended the teleconference hearing. The tenant did not attend the hearing.

The landlord testified that the tenant was served the Notice of Reconvened Hearing, the interim decision, and all other required documents by registered mail on December 3, 2020. The landlord supplied the registered mail receipt and proof of service.

The landlord submitted that they originally served the Notice of a Dispute Resolution Hearing and all Direct Request documents to the tenant by registered mail on October 13, 2020. The landlord submitted the copy of the Canada Post receipt showing the tracking number.

Based on the landlord's undisputed testimony and documentary evidence, I accept that the tenant was sufficiently served as required under the Act and the hearing proceeded in the tenant's absence.

During the hearing the landlords were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### Procedural Matters

During the hearing, I confirmed with the landlord that their application listed only their request for an order of possession of the manufactured home site and to recover the cost of the filing fee.

The landlords disagreed saying that they had also marked on their online application a request for a monetary order for unpaid monthly rent, as their monetary claim.

I searched the application and hearing information screens during the hearing, but did not see that the landlord had made a monetary claim, other than for to recover the cost of the filing fee.

I informed the landlord that I would inquire and investigate with appropriate staff after the hearing to confirm that the landlord marked the appropriate boxes on their online application, seeking a monetary order for unpaid monthly rent.

My investigation did not show that the landlord had marked that box. Additionally, the two separate Notices of hearing sent to the landlord, which were then served on the tenant, indicated to the tenant that the landlord's application contained only their request for an order of possession and recovery of the filing fee.

The respondent/tenant is to be granted procedural fairness and is entitled to know the claim against her. As the Notices of the hearing served on the tenant did not list a monetary claim, I will not consider it now.

I therefore only have considered in this Decision the landlord's request for the order of possession and to recover the cost of the filing fee.

I acknowledge that the Interim Decision granted in this matter did reference that the landlord's application pertained to an order of possession, a monetary claim for unpaid

monthly rent, and to recover the cost of the filing fee. I, however, find it clear this was an inadvertent error, and I will only consider the application before me, as stated.

#### Issue(s) to be Decided

Is the landlord entitled to an order of possession of the manufactured home site due to unpaid rent and to recover the cost of the filing fee?

#### Background and Evidence

The landlord submitted a written tenancy agreement showing a tenancy start date of July 1, 2020 and monthly pad rent of \$325. The landlord explained that they took ownership of the manufactured home park on June 13, 2020, and the tenant was already living there. The landlord explained that they were not given any written tenancy agreements when they bought the property and this was their attempt to have every tenant sign a written tenancy agreement. The tenant did not sign this document.

The landlords submitted that the tenant failed to pay the monthly rent due for August, September and October 2020, and that as a result, she was served with multiple 10 Day Notices to End Tenancy for Unpaid Rent (Notice). The Notice upon which this application was made was sent to the tenant, by registered mail on October 13, 2020, 2020, listing unpaid monthly rent of \$325 owed as of September 1, 2020. The effective move-out date listed was October 26, 2020. Filed into evidence was the Notice and signed proof of service of the Notice.

The landlord also filed copies of another Notice, from September 2020.

The landlord stated that the tenant has not vacated the manufactured home site and did not pay the amount listed on the Notice or the monthly rent for November and December 2020, or January and February 2021.

#### Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

*Order of Possession of the manufactured home site –*

Under section 20 of the Act, a tenant is required to pay rent in accordance with the terms of the tenancy agreement and is not permitted to withhold rent without the legal right to do so.

When a tenant fails to pay rent pursuant to the terms of the tenancy agreement, the landlord may serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent, as is the case here.

The Notice is not effective earlier than 10 days after the date the tenant received it. Under section 83 of the Act, a document served by registered mail is deemed received five days later. In this case, the Notice was sent by registered mail on October 13, 2020, and deemed received on October 18, 2020. Section 46 of the Act allows the effective date of a Notice to be changed to the earliest date upon which the Notice complies with the Act; therefore, I find that the listed effective date of October 26, 2020, on the Notice, is changed to October 28, 2020.

The Notice sets out for the benefit of the tenant that the Notice would be cancelled if the rent was paid within five (5) days. The Notice also explained that alternatively the tenant had five days to dispute the Notice by making an application for dispute resolution.

I have no evidence before me that the tenant applied to dispute the Notice.

I find the landlord submitted sufficient, undisputed evidence to prove that the tenant was served the Notice, did not pay any rent due, or file an application for dispute resolution in dispute of the Notice within five days of service. I therefore find the tenant is conclusively presumed under section 40(5) of the Act to have accepted that the tenancy ended on the corrected effective date of the Notice, in this case, October 28, 2020.

I therefore find that the tenancy ended on October 28, 2020, and that the landlord is entitled to and I grant an order of possession for the manufactured home site pursuant to section 48(2) of the Act, effective two days after service of the order upon the tenant.

Should the tenant fail to vacate the manufactured home site pursuant to the terms of the order after being served, the order may be filed in the Supreme Court of British Columbia for enforcement as an order of that Court. The tenant is cautioned that costs of such enforcement are recoverable from the tenant.

As the landlord's application had merit, I grant the landlord a monetary order in the amount of \$100.00 for recovery of the filing fee paid for their application.

Should the tenant fail to pay this amount to the landlord without delay after being served the order, the order may be filed in the Provincial Court of British Columbia (Small Claims) for enforcement as an order of that Court.

The landlord is at liberty to make another application for any monetary claims related to this tenancy.

### Conclusion

The landlord's application for an order of possession of the manufactured home site and recovery of their filing fee has been granted.

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: February 11, 2021

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Residential Tenancy Branch