



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNC, OLC, OPT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Tenant for more time to apply to cancel a One Month Notice to End Tenancy for Cause, an Order to cancel a One Month Notice, and an order of possession of the rental site.

Both parties appeared, gave affirmed testimony and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Issue(s) to be Decided

Has the Tenant filed her Application to dispute the One Month Notice within the timeframes allowed by section 40 the Manufactured Home Park Tenancy Act (the "Act")?

If not, has the Tenant established exceptional circumstances, pursuant to section 59(1) of the Act, to have the time period for filing their Application extended?

If so, should the Notice be cancelled?

### Background and Evidence

The Landlord and Tenant have a tenancy agreement to rent a pad in a manufactured home park and Landlord does not hold a security deposit. The parties confirmed that rent is due on the 1<sup>st</sup> of the month pursuant to their tenancy agreement.

The Landlord testified that the One Month Notice to End Tenancy was sent by registered mail to the Tenant on August 29, 2011. The One Month Notice to End Tenancy stated that the Tenancy would end on October 03, 2011. The Tenant confirmed that she has not vacated the rental site.

The Landlord provided a copy of the tracking slips into evidence prior to the hearing and the Tenant confirmed she had received the tracking information in the Landlord's evidence prior to the hearing. The Tenant testified that she did not pick up the registered mail and that she was aware there was registered mail waiting for her at the post office. The Tenant confirmed that she was available and stated that she was "lax" in not picking it up.

The Landlord testified that when he saw the registered mail was returned to him, as the Tenant had not picked it up, he personally handed a copy of the Notice to the Tenant on September 28, 2011.

The Landlord orally requested an order of possession during the hearing.

### Analysis

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

I find that the Tenant was properly served with the One Month Notice to End Tenancy for Cause on August 29, 2011 by registered mail. The deemed service date is September 03, 2011, which is five days after being sent by registered mail. As stated on the Notice, the Tenant had until September 13, 2011, ten days after the deemed service date, to file an application for dispute resolution. The Tenant did not file the Application to dispute the Notice until September 29, 2011.

The Notice is a formal legal document and the Tenant did not dispute it within the statutory time frames. The Tenant submitted a copy of both pages of the Notice with their Application for Dispute Resolution on September 29, 2011. As per section 40(4) of the Act, the Notice clearly states, on page 2, that the Tenant must file an Application for Dispute Resolution with the Residential Tenancy Branch within ten days.

Section 59(1) of the Act only allows for more time for the filing of an Application if exceptional circumstances are established. Residential Tenancy Policy Guideline 36 states that the word "exceptional" implies that the reason for failing to do something at the time required is very strong and compelling. This Policy provides the example of a tenant being in the hospital and unable to contact anyone to represent them at all material times.

The Tenant is not entitled to an extension of the time period for filing an Application for Dispute Resolution, as I find her reason of being "lax" in picking up her mail is not an exceptional circumstance. As the Tenant failed to dispute the Notice in the ten days allowed by the Act the Tenant is therefore conclusively presumed under section 40(5) of the Act to have accepted that the tenancy will end as stated by the Notice. As a result I dismiss the Tenant's Application.

The One Month Notice is dated to be effective October 03, 2011, however, this is not correct. The Notice effective date must be calculated from the deemed service date, as a result the corrected date for the Notice to be effective, pursuant to section 40(2) of the Act, is November 30, 2011, as this is one month after service and the day before the first of the month, which is when rent is due.

As the Tenant's Application is dismissed and the Landlord requested an order of possession at the hearing, pursuant to section 48 of the Act, I must grant this request.

I find that the Landlord is entitled to an order of possession effective at 1:00 P.M. on November 30, 2011.

### Conclusion

I dismiss the Tenant's Application.

I find that the Landlord is entitled to an order of possession and the Tenant must vacate the rental site by **1:00 P.M. on November 30, 2011**. A formal order of possession has been issued and may be filed in the Supreme Court and enforced as an order of that Court.

The order accompanies the Landlord's copy of this decision.

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: November 17, 2011.

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Residential Tenancy Branch