



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

CNR, CNC, OPR, MNR. FF

### **Introduction**

This Dispute Resolution hearing was convened to deal with an Application by the landlord for an Order of Possession based on a Ten-Day Notice to End Tenancy for Unpaid Rent dated February 13, 2014.

The hearing was also convened to deal with a cross application by the tenant to dispute a One-Month Notice to End Tenancy for Cause issued and served on February 4, 2014.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Preliminary Matter**

The tenant's application did not include a request to cancel the February 13, 2014 10-Day Notice to End Tenancy for Unpaid Rent .

As the tenant had filed on February 13, 2014, before receiving the landlord's 10-Day Notice, the tenant was permitted to amend their application to include a request to cancel the subsequent Ten Day Notice to End Tenancy for Unpaid Rent issued on February 13, 2014.

### **Issue(s) to be Decided**

- Is the landlord entitled to an Order of Possession based on the Ten-Day Notice to End Tenancy issued under section 39 or in the alternative based on the One Month Notice to End Tenancy for Cause?

- Should the 10-Day Notice to End Tenancy for Unpaid Rent be cancelled as requested by the tenant and if so, should the One Month Notice to End Tenancy for Cause be cancelled as requested by the tenant?

### **Background and Evidence**

The tenancy began approximately in October 2012 when the parties agreed that the ownership of an abandoned manufactured home would be transferred to the tenant and the tenant would pay a monthly pad fee of \$401.00 under the tenancy agreement.

The landlord testified that, after the tenant failed to pay rent due on February 1, 2014, a Ten Day Notice to End Tenancy for Unpaid Rent was served on the tenant by registered mail.

The landlord submitted into evidence a copy of the Ten-Day Notice to End Tenancy dated February 13, 2014. The landlord testified that, although the tenant promised to pay the rent the tenant failed to pay the rental arrears within the 5-day deadline , which would have served to cancel the Notice.

According to the landlord, the tenant failed to pay the arrears and , in fact failed to pay \$401.00 rent due on March 1, 2014 and \$401.00 rent due on April 2014, accruing total arrears of \$1,203.00 now being claimed. The landlord testified that the tenant also owes 3 late payment charges totaling \$75.00 and NSF charges of \$75.00 pursuant to a term in the tenancy agreement. The total claim is for \$1,353.00 plus the \$50.00 cost of the application.

The tenant testified there were circumstances beyond the tenant's control that caused the arrears but the tenant is expecting funds in the near future and hoped to catch up. rental arrears.

### **Analysis**

Section 39(1) of the Manufactured Home Park Tenancy Act (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 notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 39(4) of the Act states that, **within 5 days after receiving a notice** under this section, the tenant may pay the overdue rent, in which case the notice has no effect, **or dispute the notice** by making an application for dispute resolution. (My emphasis)

I find that the arrears shown on the Notice in this case would have to be paid by February 19, 2014 in order to cancel the Notice. I find that the tenant did not pay the arrears within 5 days of receipt of the Notice.

I accept the testimony of both parties that the tenant has also accrued further arrears since the original Ten Day Notice to End Tenancy for Unpaid Rent was issued.

In the case before me, the tenant was permitted to dispute the Notice, but had no defense against the allegation that rent was not paid.

Based on evidence, I find the tenant did not pay rent when it was due and was served with a Ten-Day Notice to End Tenancy for Unpaid Rent. I accept that the tenant did not pay the outstanding rent within the 5-day deadline allowed under the Act to cancel the Notice and accrued further arrears, late payment charges and NSF charges.

Based on the evidence, I find that the landlord is entitled under section 60 of the Act to monetary compensation of \$1,403.00 comprised of \$1,203.00 rental arrears, \$75.00 late fees, \$75.00 charges for returned cheques and the \$50.00 cost of the application.

I hereby grant the landlord a monetary order for \$1,403.00. This order must be served on the tenant and may be enforced through BC Small Claims Court if unpaid.

Based on the above facts, I find that the Landlord is entitled, under *section 48* of the *Act*, to an Order of Possession. I hereby issue an Order of Possession effective two days after service on the Tenant. This order must be served on the Respondent and may be filed in the Supreme Court and enforced as an order of that Court.

In regard to the tenant's application, I find that the request to cancel the 10-Day Notice must be dismissed. The tenant's application, to cancel the One-Month Notice to End Tenancy for Cause is found to be moot as the tenancy is ending for unpaid rent.

### **Conclusion**

The landlord is successful in the application and is granted an Order of Possession and monetary order based on the 10-Day Notice to End Tenancy for Unpaid Rent. The tenant's cross application is dismissed without leave to reapply.

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: April 08, 2014

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Residential Tenancy Branch

