



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, OPR, MNR, FF

### Introduction

This hearing was scheduled to deal with cross applications. The tenants applied to cancel a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord applied for an Order of Possession for unpaid rent and a Monetary Order for unpaid and/or loss of rent. Both parties appeared or were represented at the hearing 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

1. Should the 10 Day Notice to End Tenancy for Unpaid Rent be upheld or cancelled?
2. Is the landlord entitled to a Monetary Order for unpaid and/or loss of rent for the months of April through June 2014?

### Background and Evidence

The monthly rent of \$445.00 is due on the 1<sup>st</sup> day of every month. Rent was not paid for the month of April 2014 and on May 2, 2014 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the Notice) and served both pages upon the male tenant. The Notice names only the male tenant and indicates rent of \$445.00 was outstanding as of April 1, 2014. The stated effective date on the Notice is May 13, 2014.

Both parties stated they are unable to locate a written tenancy agreement for this site and that the tenancy started before the current landlord purchased the property. Both parties were of the position the tenants named in this dispute are co-tenants although the female tenant has not resided at the property for approximately a year and a half. Further, the male tenant has power of attorney over the financial affairs of the female tenant.

The tenant filed to dispute the 10 Day Notice within five days of receiving it. Rent remains outstanding for April and May 2014 and no monies have been paid to the landlord for the month of June 2014.

The tenant explained that he suffered a loss of income this year and his mother, the co-tenant, is currently residing in a care facility. The tenant stated that his intention is to sell the manufactured home. The tenant seeks to have the Notice cancelled and resolve this dispute by way of a mutual agreement. The landlord was not agreeable to continuation of the tenancy as she has concerns about the tenant's ability to sell the manufactured home given its current condition and absence of a CSA label. As such, the landlord requested an Order of Possession as well as a Monetary Order for the unpaid and/or loss of rent for the months of April through June 2014.

### Analysis

Under the Act, a tenant is required to pay rent when due in accordance with their tenancy agreement. Co-tenants are jointly and severally liable for paying rent to the landlord.

Where a tenant does not pay rent the landlord is at liberty to issue a 10 Day Notice to End Tenancy for Unpaid Rent. When a tenant receives a 10 Day Notice the tenant has five days to pay the outstanding rent to nullify the Notice or the tenant has five days to dispute the Notice by filing an Application for Dispute Resolution. Where a tenant files to dispute a 10 Day Notice the tenant must be prepared to present a legal basis for not paying rent; present evidence the rent was paid; or, another reason for finding the Notice otherwise invalid.

In this case, the tenant filed to dispute the 10 Day Notice but did not present a legal basis for withholding rent as a tenant's financial circumstances are not a basis for not paying rent that is due to the landlord. Upon review of the 10 Day Notice I accept that the tenant was served with a valid and enforceable 10 Day Notice. Although the Notice does not name the female tenant, given the male tenant has power of attorney over her affairs, I find the tenants are not prejudiced by the omission of the female tenant's name on the Notice. Therefore, I find no basis under the Act to cancel the Notice and I dismiss the tenant's Application for Dispute Resolution.

In light of the above, I find the tenancy ended on the effective date of May 13, 2014 and the landlord is entitled to regain possession of the rental site. I provide the landlord with an Order of Possession effective two (2) days after service upon the tenants.

I accept the undisputed evidence before me that the landlord is entitled to recover unpaid rent of \$890.00 from the tenants for the months of April and May 2014. Since the site remains occupied I further award the landlord loss of rent of \$445.00 for the month of June 2014. As the landlord was successful in this proceeding, I award the landlord recovery of the filing fee paid for the landlord's application. Accordingly, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent: April and May 2014	\$ 890.00
Loss of Rent: June 2014	445.00
Filing fee	<u>50.00</u>
Monetary Order	\$1,385.00

The landlord must serve the Monetary Order upon the tenants and may enforce it in Provincial Court (Small Claims) as necessary.

#### Conclusion

The tenants' Application has been dismissed.

The landlord has been provided an Order of Possession effective two (2) days after service. The landlord has also been provided a Monetary Order in the amount of \$1,385.00 to serve and enforce as necessary.

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: June 25, 2014

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Residential Tenancy Branch

