



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession based on unpaid rent.

Only the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified they served the Tenant with the Notice of Hearing and their Application on October 16, 2015, by posting it to the door of the Tenant's bus. Under the Act documents served this way are deemed served three days later. I find the Tenant was duly served.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Issues

The Landlord had indicated on the Application that this matter was under the Residential Tenancy Act. However, the Landlord is renting the Tenant a site on which to place his bus. Therefore, I found the tenancy would be more appropriate to handle under the Manufactured Home Park Tenancy Act, and I have amended the application and style of cause accordingly. I further find that this does nullify the documents served as the evidence is the Tenant has failed to pay rent and has failed to dispute the 10 day Notice to End Tenancy for unpaid rent.

I also note that the Landlord had amended the Application to not request monetary orders or the filing fee for the cost of the Application. Nevertheless, the Landlord may

still apply for a monetary order for the loss of rent and for other losses due to the breaches of the Tenant.

### Issue(s) to be Decided

Has the Tenant breached the Act or tenancy agreement, entitling the Landlord to an order of possession?

### Background and Evidence

The Tenant is renting a site from the Landlord on which to park his bus. The Landlord testified that the Tenant has failed to pay rent for this site for several months.

Based on the testimony of the Landlord and the evidence submitted, I find that the Tenant was served with a 10 day Notice to End Tenancy for non-payment of rent on September 18, 2015, by posting it to the Tenant's bus (the "Notice"). In evidence the Landlord has submitted a signed statement from a witness who saw the Landlord post the Notice on the bus on September 18, 2015.

The Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days of service. The Notice also explains the Tenant had five days from the date of service to dispute the Notice by filing an Application for Dispute Resolution.

The Landlord testified that the Tenant failed to pay the rent and he has not disputed the Notice.

### Analysis

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

The Tenant has not paid the outstanding rent and did not apply to dispute the Notice and is therefore conclusively presumed under section 38(5) of the Act to have accepted that the tenancy ended on the effective date of the Notice.

Under section 20 of the Act, the Tenant must not withhold rent, even if the Landlord is in breach of the tenancy agreement or the Act, unless the Tenant has some authority under the Act to not pay rent. In this situation the Tenant had no authority under the Act to not pay rent.

Therefore, I find that the Landlord is entitled to an order of possession effective **two days** after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

The Landlord may make another Application for the outstanding rent and other losses he may be entitled to under the Act.

### Conclusion

The Tenant failed to pay rent and did not file to dispute the Notice to End Tenancy. The Tenant is presumed under the law to have accepted that the tenancy ended on the effective date of the Notice to End Tenancy.

The Landlord is granted an order of possession effective two days after service on the Tenant. The Landlord may apply for monetary orders for losses he may be entitled to under the Act.

This decision is final and binding on the parties, except as otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 14, 2015

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Residential Tenancy Branch

