



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      DRI CNR MNR MNDC ERP RP RPP RR FF O

### Introduction

This hearing was convened as a result of the Tenants' Application for Dispute Resolution, received at the Residential Tenancy Branch on May 19, 2016 (the "Application").

The Tenants apply for the following relief pursuant to the *Manufactured Home Park Tenancy Act* (the "Act"): an order cancelling an additional rent increase; an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated May 13, 2016 (the "10 Day Notice"); a monetary order for the cost of emergency repairs; a monetary order for money owed or compensation for damage or loss; an order requiring the Landlord to make emergency repairs for health or safety reasons; an order requiring the Landlord to make repairs to the unit, site or property; an order requiring the Landlord to return the Tenants' property; an order permitting the Tenants to reduce rent for repairs, services or facilities; an order granting recovery of the filing fee paid; and other unspecified relief.

The Landlord was represented at the hearing by G.C., E.A., and R.T. The Tenants both attended the hearing on their own behalf. The parties provided their solemn affirmations.

In their Application, the Tenants seek a number of orders. Rule 2.3 of the Rules of Procedure permit an arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. The most important issue in the Tenants' application was whether or not the tenancy will continue. Further, the remainder of the relief being sought by the Tenants is monetary in nature. Accordingly, I find it appropriate to exercise my discretion to dismiss all but the Tenants' application to cancel the 10 Day Notice, with leave to reapply at a later date.

With respect to documentary evidence, the Tenants claimed they did not receive the Landlord's most recent evidence, which was received at the Residential Tenancy

Branch on June 7, 2016. The Landlord says it was served on the Tenants. In any event, I have concluded that the evidence does not pertain to the issue before me; that is, it is not relevant to the issue of whether or not the tenancy will continue. Accordingly, it has not been considered in this Decision.

Each party otherwise acknowledged receipt of the documentary evidence submitted by the other.

The parties were provided with the opportunity to present their evidence orally and in written and documentary form, and make submissions.

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.

#### Issue to be Decided

Should the 10 Day Notice be cancelled?

Is the Landlord entitled to an order of possession?

Are the Tenants entitled to recover the filing fee?

#### Background and Evidence

In a decision dated May 16, 2016 – referenced on the cover page above for convenience – the Arbitrator determined that the *Act* applies to the relationship between the parties. She concluded a tenancy exists, and that rent in the amount of \$650.00 per month is payable to the Landlord on the first day of each month. Further, the Arbitrator confirmed that the parties are bound by the schedule of tenancy terms contained in the Regulations and any current Park Rules.

The Landlord provided in evidence a copy of the 10 Day Notice. Also included was a Proof of Service form confirming the 10 Day Notice was served on the Tenants on that date, in person and by attaching a copy to the Tenants' door.

On behalf of the Landlord, G.C. advised that rent is outstanding for the months of April, May and June 2016, less a \$400.00 monetary award arising from the previous Arbitrator's decision. G.C. says \$1,450.00 is currently outstanding.

On behalf of the Tenants, R.M. confirmed that rent has not been paid as claimed by the Landlord. However, he says it has been withheld pending his own monetary claims.

### Analysis

In light of the oral and documentary evidence submitted by the parties, and on a balance of probabilities, I find:

Section 20 of the *Act* confirms a tenant must pay rent when due, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Pursuant to section 39 of the *Act*, a landlord may end a tenancy if rent remains unpaid on any day after the day it is due. In order to be effective, a notice to end tenancy must comply with section 45 of the *Act*.

The 10 Day Notice is in writing; is signed and dated by the Landlord; provides the address of the rental site; states the effective date of the notice; states the grounds for ending the tenancy; and is in the approved form. Accordingly, I find the 10 Day Notice complies with section 45 of the *Act*.

Further, I find the 10 Day Notice was duly served on the Tenants on May 13, 2016.

The Tenants have acknowledged that rent has not been paid, and there was insufficient evidence to satisfy me they had a right under the *Act* to deduct all or a portion of the rent. Accordingly, the Tenants' request for an order cancelling the 10 Day Notice is dismissed.

Section 48 of the *Act* requires that I grant an order of possession to a landlord when a tenant's application for dispute resolution is dismissed and the notice complies with section 45 of the *Act*.

As I have dismissed the Tenants' Application and determined the 10 Day Notice complies with section 45 of the *Act*, I grant the Landlord an order of possession. The Order will be effective two days after service of the order on the Tenant.

As the Tenants have not been successful, I decline to grant them an order for recovery of the filing fee.

Conclusion

The Tenants' application for an order cancelling the 10 Day Notice is dismissed and the 10 Day Notice is upheld.

I grant the Landlord an order of possession to the Landlord, which will be effective two days after service on the Tenants. Should the Tenants fail to comply with the order, it may be filed in and enforced as an Order of the Supreme Court of British Columbia.

This decision 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: June 17, 2016

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Residential Tenancy Branch