



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNR, O

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to file an application to dispute a Notice to End Tenancy; to dispute a 10 Day Notice to End Tenancy for unpaid rent or utilities and other issues.

The tenant and landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The tenant provided limited documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord confirmed receipt of evidence. 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(s) to be Decided

- Is the tenant entitled to more time to file his application to dispute the 10 Day Notice to End Tenancy?
- Is the tenant entitled to an Order to cancel the 10 Day Notice to End Tenancy?

### Background and Evidence

The parties agreed that this month to month tenancy for the pad on this mobile home park started in 2012. Rent for this pad is \$225.00 per month due on the 1<sup>st</sup> of each month.

The landlord testified that the tenant was personally served a 10 Day Notice to End Tenancy for unpaid rent or utilities (the Notice) on July 07, 2016. The tenant confirmed receipt of the Notice on this date. A Copy of the Notice has been provided in documentary evidence by the tenant and shows that the Notice has an effective date of July 17, 2016. The Notice states that the tenant owes rent of \$900.00 which was due on July 01, 2016. The Notice informs the tenant that he has five days to pay the outstanding rent or file an application to dispute the Notice.

The landlord testified that the tenant failed to pay rent for December, 2015 and for February, May and July 2016. The landlord requests that the Notice is upheld and seeks an Order of Possession effective on August 31, 2016.

The tenant filed his application to dispute the Notice on July 14, 2016. The tenant was asked if he had any extraordinary, serious or compelling reasons why he did not file his application within the 10 allowable days. The tenant testified that he does not have any serious reason why his application was filed late. The tenant also agreed that he owes rent for the four months detailed above to a total of \$900.00.

#### Analysis

I accept that the landlord served the tenant with a 10 Day Notice to End Tenancy on July 14, 2016 in person. Therefore the tenant had 5 days or until July 19, 2016 to either pay the outstanding rent in full or file an application to dispute the Notice. The tenant did not pay the outstanding rent and did not file his application until July 14, 2016 which was seven days after being deemed to have received the Notice.

Section 59(1) of the *Manufactured Home Park Tenancy Act* states:

**Director's orders: changing time limits**, and provides in part as follows:

- 59** (1) *The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 52*  
(3) [starting proceedings] or 74 (4) [decision on application for review].

The Residential Tenancy Policy Guideline # 36 speaks to “Extending a Time Period” and provides in part: The word “exceptional” means that an ordinary reason for a party not having complied with a particular time limit will not allow an Arbitrator to extend that time limit. The word “exceptional” implies that the reason for failing to do something at the time required is very strong and compelling. Furthermore, a “reason” without any force of persuasion is merely an excuse. Thus, the party putting forward said “reason” must have some persuasive evidence to support the truthfulness of what is said.

Some examples of what might **not** be considered "exceptional" circumstances include:

- the party who applied late for arbitration was not feeling well
- the party did not know the applicable law or procedure
- the party was not paying attention to the correct procedure
- the party changed his or her mind about filing an application for arbitration
- the party relied on incorrect information from a friend or relative

Following is an example of what could be considered "exceptional" circumstances, depending on the facts presented at the hearing:

- The party was in the hospital at all material times.

Consequently, I find the tenant has been unable to demonstrate any exceptional circumstances as to why their application was not filed within the allowable five days after receiving the Notice and the tenant did not dispute that their remains \$900.00 in outstanding rent. Consequently, I must dismiss the tenant’s application to set aside the Notice.

Section 48(1) of the *Manufactured Home Park Tenancy Act* states:

**48** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if*

- (a) the landlord's notice to end tenancy complies with section 45 [form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

On the basis of this, as I have dismissed the tenant's application, I grant the landlord an Order of Possession pursuant to s. 48 of the *Act*. As the effective date of the Notice has since passed I have issued an Order of Possession effective as requested on August 31, 2016.

#### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply. The 10 Day Notice to End Tenancy dated July 07, 2016 will remain in force and effect.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective **August 31, 2016**. This Order must be served on the tenant. If the tenant fails to comply with the Order, the Order may be filed in the Supreme Court and enforced as an Order of that Court.

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: August 23, 2016

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Residential Tenancy Branch