



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- an order of possession for cause pursuant to section 48;
- authorization to recover the filing fee for this application from the tenant pursuant to section 65.

Tenant:

- cancellation of a 1 Month Notice to End Tenancy For Cause, pursuant to section 40
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

The tenant’s application was filed within the time period required under the Act.

### Issues

Do I have jurisdiction under the Act to make a decision on the application before me?

If yes, is the landlord entitled to an order of possession?

Is the landlord and/or tenant entitled to recover the filing fee for this application?

### Background and Evidence

The rental unit is a pad on which the tenant's manufactured home is located. The tenancy began on August 1, 2009 with a monthly rent of \$500.00 payable on the 1<sup>st</sup> day of each month.

In a decision dated November 7, 2013, Arbitrator D. Vaughn dismissed the applications before him as he found the matter was linked substantially to a matter that is before the Supreme Court and declined jurisdiction to resolve the dispute. Subsequently, in a decision dated June 1, 2016, Arbitrator E. Nazareth found that the matter was not substantially linked to a matter before the Supreme Court and assumed jurisdiction over the dispute. In her findings, E. Nazareth found that although the tenant had made a petition to the Supreme Court in July 2011, the tenant had not since followed up on his petition and no trial date had been set. Both of the above applications were in relation to a Notice to End Tenancy. After assuming jurisdiction over the dispute, E. Nazareth ultimately dismissed the Notice to End Tenancy as she found the Notice was not in the approved form.

The tenant again argued that this matter does not fall within the jurisdiction of the Act as he has filed a Notice of Civil Claim in The Supreme Court of British Columbia. The tenant submitted a Notice of Trial form indicating a trial date has now been set for March 6, 2017.

The landlord argued that the matter falls within the jurisdiction of the Act as Arbitrator E. Nazareth had assumed jurisdiction in a previous decision. The landlord further argued that even though a trial date had now been set in the Supreme Court, there is no substantial link between the Civil Claim and the applications before me.

The landlord served the tenant with the 1 Month Notice on June 30, 2016 indicating various grounds to end the tenancy including repeated late rent payments. For the Notice to be upheld, it is only necessary for that landlord to establish that there was cause to end the tenancy on at least one of the grounds indicated on the Notice. While the parties presented documentary evidence and testimony pertaining to each of the grounds indicated on the notice, only the submissions and/or arguments pertaining to the alleged ground of repeated late payments are reproduced here.

The landlord submits that the tenant was late paying rent on the following dates:

April 1, 2016 – rent was not received until April 20, 2016. The landlord provided a copy of a money order dated April 15, 2016.

May 1, 2016 – rent was not received until May 7, 2016. The landlord provided a copy of a money order dated May 2, 2016.

June 1, 2016 – rent was not received until June 6, 2016. The landlord provided a copy of a money order dated June 1, 2016.

July 1, 2016 – the tenant made a partial payment of \$55.25 by money order dated June 29, 2016 and another partial payment in the amount of \$344.25 by money order dated July 7, 2016.

The landlord submits that each of the above rent payments were sent by the tenant via a postal money order through Canada Post. The dates on the money orders are the dates the money orders were sent via mail and not received by the landlord until four or five days after being mailed. The landlord submits that the tenancy agreement requires rent to be paid on the 1<sup>st</sup> day of each month. The landlord submitted an invoice from the tenant dated April 4, 2016 which it submits was an unlawful attempt by the tenant to withhold rent for the month of April 2016.

The tenant relied on his written submissions in response to the landlord's allegation that he was repeatedly late paying the rent. In his written submissions, the tenant submits that he pays his rent on time each month by Canada Post money orders as evidenced by the copies of money orders contained in the landlord's submissions. The tenant further submits that the late payment in April is a result of the landlord's refusal to compensate the tenant for emergency repairs done in good faith. With respect to the July payment, the tenant submits that the adjusted payment of \$344.25 made on July 7, 2016 was a result of the landlord's repeated breach of a material term of the lease and his obligation to pay property tax. The tenant further submits that the "post mark act is elementary law". The tenant did not provide any further clarification of this argument.

### Analysis

Section 51(2)c of the Act requires that the director must resolve an application for dispute resolution which it accepts under this section unless the dispute is linked substantially to a matter that is before the Supreme Court.

I reject the tenant's argument that this matter does not fall within the jurisdiction of the Act. The tenant is relying on the fact that he has filed a Notice of Civil Claim in The Supreme Court and that a trial date has been set. This fact alone is not enough to preclude jurisdiction. Rather, it has to be shown that the application for dispute resolution is linked substantially to the matter that is before the Supreme Court. The tenant has not made any submissions with respect to if and how the two matters are

linked. The dispute before me is in regards to a Notice to End Tenancy for Cause on the basis of repeated late rent payments as well as various other reasons. The landlord is seeking an order of possession of the rental unit on these grounds. I have reviewed the tenancy agreement and Notice of Civil Claim submitted by the tenant and I do not find any link in the tenancy agreement or civil claim with respect to the tenant having an ownership interest in the rental unit or the property on which the rental unit is located. The rental unit in this case is a pad on the landlord's property on which the tenant's manufactured home is located. Accordingly, I find that this dispute is not linked substantially to a matter that is before the Supreme Court and I have jurisdiction to make a decision on the application before me.

Section 40 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 40(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

In this case, amongst various other alleged grounds, the landlord issued the 1 Month Notice pursuant to paragraph 40(1)(a) of the Act, which permits a landlord to terminate a tenancy if the tenant has been repeatedly late paying rent. Residential Tenancy Policy Guideline #38 Repeated Late Payment of Rent provides that a minimum of three late payments constitutes cause pursuant to paragraph 40(1)(a) of the Act. In exceptional circumstances, an arbitrator may consider the reason(s) for the late payments.

Pursuant to section 20 of the Act, the tenant has the obligation to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenancy agreement sets out that rent in the amount of \$500.00 is due on the first day of each month. I accept the landlord's evidence that rent was not received in full on the first of each month in April, May, June and July 2016. I do not accept the tenant's submission that rent was paid on time as it was sent by mail and postmarked on the due date. Rent is required to be paid on the due date not simply deposited in the mail on the due date. Further, the tenant's argument that he initially withheld April and July rent for emergency repairs and due to the landlord's breach of a material term is dismissed. The tenant has not established that he had a right under the Act to deduct all or a portion of the rent in accordance with the Emergency repair provisions of section 27 of the Act. Further, the Act does not permit a tenant to withhold rent in cases where the landlord has allegedly breached a material term of the agreement.

I find that the landlord has provided sufficient evidence to justify that it had cause to issue the 1 Month Notice on the grounds of repeated late payments. The tenant's application to cancel the 1 Month Notice is dismissed and the landlord is entitled to an Order of Possession pursuant to section 48 of the Act.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for this application from the landlord.

The landlord's application for an order of possession was not required as the tenant had already filed an application to dispute the 1 Month Notice. Therefore, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application from the tenant.

### Conclusion

I grant an Order of Possession to the landlord effective **two days after service of this Order** on the tenant. Should the tenant(s) fail to comply with this Order, this Order may be filed 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 *Manufactured Home Park Tenancy Act*.

Dated: September 19, 2016

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Residential Tenancy Branch