



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenant's application for more time to cancel a Notice to End Tenancy; for an Order to cancel a One Month Notice to End Tenancy for Cause; and to recover the filing fee from the landlord for the cost of this application.

The tenant and two landlords attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions under oath. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties 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.

### Preliminary issues

The landlord DA advised me there was an error in the spelling of his first name. The parties did not raise any objections to the error being corrected and this has now been amended on the style of cause.

The tenant had applied for more time to file his application to dispute the Notice to End Tenancy. The tenant was deemed to have been served the One Month Notice on October 09, 2016 and the tenant filed his application within the 10 allowable days. Therefore as the tenant did file his application on time the tenant advised that he will withdraw his application for more time as it is not required.

#### Issue(s) to be Decided

- Is the tenant entitled to an Order to cancel the One Month Notice to End Tenancy for cause?
- If the tenant's application is unsuccessful is the landlord entitled to an Order of Possession?

#### Background and Evidence

The tenant testified that his tenancy started around 1998. The landlords testified that they do not have knowledge of the date or year the tenancy started as they only took over as landlords less than two years ago. The parties agreed that rent for this manufactured home site pad is \$395.00 per month and is due on the 1<sup>st</sup> of each month.

The landlord DA provided testimony on behalf of the landlords and testified that the tenant has been repeatedly late paying his rent since they took over the manufactured home park. The landlord referred to their documentary evidence showing a record of rent payments made since June 2016. The landlord testified that rent was paid late as follows:

June, 2016 – paid on June 08

July, 2016 – paid on July 16

August, 2016 – paid on August 24 and September 21

September, 2016 – paid on September 08

October, 2016 – paid on October 05

November, 2016 – paid on October 28.

The landlord testified that as the tenant has paid his rent late on many occasions they served the tenant with a One Month Notice to End Tenancy for cause by email on October 03, 2016 and by registered mail on October 04, 2016. A copy of the Canada Post receipt and tracking information was provided in documentary evidence. The landlord testified that the registered mail was returned as unclaimed by the tenant.

The landlord seeks an Order of possession for the pad and is willing to provide the tenant additional time to remove the trailer by February 28, 2017.

The tenant agreed he did receive the One Month Notice to End Tenancy by email. The tenant also agreed he has paid his rent late as shown by the landlord. The tenant testified that the landlord knew the tenant got paid on the 8<sup>th</sup> and 25<sup>th</sup> of each month and agreed the tenant could pay his rent on the 8<sup>th</sup> of each month. In either August, September or October the tenant got laid off and paid rent late while waiting for his EI payments to start. The tenant testified that he now has a new job and has worked with the landlord to keep them informed about rent payments. The tenant testified that the way his pay is now structured means he can pay his rent when due and has done so for November and December. The tenant seeks to have the One Month Notice cancelled and for the tenancy to continue.

The landlord testified that they have had numerous discussions with the tenant about rent and other issues they have had with the tenant. The landlord disputed that they had reached any agreement with the tenant about rent payments.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I find that the One Month Notice was served upon the tenant by registered mail as the tenant cannot refuse service of documents. I therefore deem the tenant was

served the One Month Notice on October 09, 2016 although the tenant did receive it earlier by email. I refer the parties to s. 20 of the *Manufactured Home Park Tenancy Act* (Act) concerning payment of rent:

*20. A tenant must 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 tenant has the responsibility to ensure rent is paid on the first day of each month as agreed by the parties as the day of the month that rent is due. I am satisfied from the evidence before me that rent has been repeatedly late including, June, July August, September and October, 2016.

I refer the parties to the Residential Tenancy Policy Guidelines #38 which states, in part, that the Act provides that a landlord may end a tenancy where the tenant is repeatedly late paying rent. Three late payments are the minimum number sufficient to justify a notice under these provisions.

I find the tenant has been repeatedly late paying rent on at least five occasions in 2016. Consequently, I find the tenant's application to cancel the Notice cannot succeed and is therefore dismissed.

I refer the parties to s. 48(1) of the *Residential Tenancy Act* (Act) which 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.*

I find the One Month Notice does comply with s. 45 of the *Act* and as I have dismissed the tenant's application to cancel the Notice I issue the landlord an Order of Possession effective as requested on February 28, 2017 pursuant to s. 48 of the *Act*.

As the tenant's application is dismissed I find the tenant must bear the cost of filing his own application.

### Conclusion

The tenant's application is dismissed without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on February 28, 2017. 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: December 12, 2016

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Residential Tenancy Branch