



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Landlord's Application made January 15, 2018: OPR; MNR; FF  
Tenant's Application made January 17, 2018: MT; CNR

### **Introduction**

The Landlord's Application was made under the provisions of Section 48(4) of the Act (an ex parte Direct Request Proceeding). An Interim Decision was rendered, which should be read in conjunction with this Decision. The adjudicator ordered that the Landlord's Application be reconvened so that questions could be asked and answered with respect to the Tenant's name. The Landlord seeks an Order of Possession and a Monetary Order for unpaid rent pursuant to a Notice to End Tenancy for Unpaid Rent issued January 3, 2018; and to recover the cost of the filing fee from the Tenant.

The Tenant made an Application on January 17, 2018, seeking an extension of time to dispute the Notice to End Tenancy for Unpaid Rent issued January 3, 2018 (the "Notice"); and to cancel the Notice.

Both parties and the Tenant's witness LW gave affirmed testimony at the Hearing, which took place by teleconference. The parties were advised how the Hearing would proceed and were given the opportunity to ask any relevant questions they might have about the hearing process.

The Tenant stated that her name used to be TH (the name on the tenancy agreement), but that she and her husband split up and therefore she went back to her maiden name, TW. The Landlord's Application was amended to reflect both names as the Respondent (TH, also known as TW).

The Landlord testified that he mailed his Notice of Reconvened Hearing documents to the Tenant, by registered mail. The Landlord provided the tracking numbers for the

registered documents, along with the copy of the tracking information which shows that the Tenant accepted delivery of the registered package on January 16, 2018.

The Tenant testified that she mailed her Notice of Hearing package to the Landlord, by registered mail, but that she did not have a copy of the receipt and therefore could not provide the tracking numbers. The Landlord replied that he did not receive any documents from the Tenant and stated that he was unaware that she had made her own Application to dispute the Notice.

Preliminary Matter: Tenant's application for an extension of time to dispute the Notice

The Landlord testified that he posted the Notice to the Tenant's door on January 3, 2018. The Landlord provided a Proof of Service document, signed by a witness. The Tenant testified that she did not receive the Notice until January 15, 2018, at 2:00 p.m., when she returned home from taking care of her sick mother. The Tenant stated that she had been away taking care of her mom for "1 and a half months" and that she thought she had made a direct deposit into the Landlord's bank account for January's rent. The Tenant stated that her mother could give testimony to the fact that the Tenant did not return home until January 15, 2018. We adjourned for 10 minutes to allow the Tenant to contact her mother so that her mother could dial into the Hearing and give her testimony.

The Tenant's witness LW is the Tenant's mother. She testified that she was ill and that the Tenant was with her from January 15, 2018 to February 15, 2018. I asked LW if she was certain of the dates, and she replied that she was.

The Tenant stated that her mom is sick and has her dates mixed up. She stated that her dad could call in and give testimony. I adjourned the matter for another 10 minutes to allow the Tenant's father to dial into the Hearing. We waited 12 minutes, but the Tenant's father did not sign into the Hearing.

The Act provides that, absent conclusive evidence to the contrary, documents served by posting to the party's door are deemed to be served 3 days after posting the documents. The Act provides that an extension of time to dispute a notice to end tenancy may be granted, but only exceptional circumstances.

I accept the Landlord's evidence that the Notice was posted to the Tenant's door on January 3, 2018. In this case, I find that there is insufficient evidence that the Tenant was away from January 3, 2018 (the date that the Landlord posted the Notice to the

Tenant's door) until January 15, 2018. Therefore, in the absence of conclusive evidence to the contrary, I find that the Tenant was served with the Notice on January 6, 2018 (3 days after it was posted to her door).

Of additional importance is the Landlord's assertion that he was not served with notice of the Tenant's Application. I find that the Tenant did not provide sufficient evidence that she mailed her Notice of Hearing documents to the Landlord, or on what date they were mailed.

For the reasons outlined above, the Tenant's Application is dismissed.

The Hearing continued with respect to the Landlord's Application for Dispute Resolution.

### **Issue(s) to be Decided**

Is the Landlord entitled to an Order of Possession and a Monetary Order for unpaid rent?

### **Background and Evidence**

This tenancy began on January 1, 2014. Pad rent at the beginning of the tenancy was \$204.00. Current rent is \$223. Rent is due on the first day of each month.

The Landlord acknowledged that the Tenant paid January's rent on January 16, 2018. He stated that the Tenant also paid rent for February and March, 2018, but that he told the Tenant he was not going to reinstate the tenancy.

The Tenant acknowledged that the Landlord told her that he was "going to go ahead with the arbitration". She stated that she understood that meant that he was going to ask for an Order of Possession.

The Landlord stated that he had not changed his mind and that he still wanted an Order of Possession.

### **Analysis**

I find that the Landlord is entitled to an Order of Possession for the following reasons:

1. Section 48 of the Act provides that a Landlord is entitled to an Order of Possession if a Tenant's application to dispute the Notice is dismissed, or if the Tenant does not dispute the Notice within the required time provided by the Act (in this case 5 days from receipt of the Notice). I have dismissed the Tenant's Application.
2. Based on both parties' testimony, I find that the Landlord accepted rent for January, February and March, 2018, for "use and occupancy only", and that he did not reinstate the tenancy by accepting such rent.

I find that the Landlord is not entitled to a monetary award for unpaid rent or compensation for loss of revenue, as January rent has been paid in full and he has not suffered a loss for February or March, 2018.

The Tenant has paid for use and occupancy of the site until March 31, 2018. Therefore, the Landlord is hereby provided with an Order of Possession effective March 31, 2018.

The Landlord's Application had merit and I find that he is entitled to recover the cost of the \$100.00 filing fee from the Tenant.

### **Conclusion**

The Tenant's Application is dismissed.

The Landlord is hereby provided with an Order of Possession effective 1:00 p.m., March 31, 2018, for service upon the Tenant. This Order may be enforced in the Supreme Court of British Columbia.

The Landlord is also hereby provided with a Monetary Order in the amount of \$100.00, representing recovery of the cost of the filing fee, for service upon the Tenant. This Order may be enforced in the Provincial Court of British Columbia (Small Claims 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: March 23, 2018

