



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYSOR ENTERPRISES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNRL, OPR, FFL

### Introduction

This teleconference hearing was scheduled in response to an application by the Landlord under the *Manufactured Home Park Tenancy Act* (the “Act”) for an Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent (the “10 Day Notice”), for a Monetary Order for unpaid rent and for the recovery of the filing fee paid for this application.

During the hearing, the Landlord confirmed that there is no longer any amount of rent outstanding and therefore they will not be requesting a Monetary Order.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, as was the Tenant and an advocate for the Tenant (the “Tenant”). A witness called into the hearing to provide testimony for the Tenant. The Tenant confirmed receipt of the Notice of Dispute Resolution Proceeding package along with copies of the Landlord’s evidence. The Tenant did not submit any evidence in advance of the hearing.

All parties were affirmed to be truthful and were provided the opportunity to present evidence, make submissions and ask questions of the other party.

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.

Issues to be Decided

Should an Order of Possession be granted to the Landlord?

Is the Landlord entitled to a Monetary Order for unpaid rent?

Is the Landlord entitled to the recovery of the filing fee paid for the Application for Dispute Resolution?

Background and Evidence

The Landlord testified that there is no written tenancy agreement in place and that the tenancy began many years ago. The current Landlord took over in approximately 2010. Current monthly rent is \$265.00.

The Landlord stated that in 2014 the Tenant was behind on rent, so the Tenant agreed to pay \$400.00 per month until he caught up on outstanding rent. A letter, dated November 27, 2014, stated that the Tenant would pay \$400.00 per month in rent until the amount owing, \$2,657.00, was paid off.

The Landlord provided testimony that in May 2018, \$983.00 of rent remained outstanding, as the Tenant had not continued with his agreement to pay \$400.00 per month. On May 4, 2018, the Landlord served the Tenant with a 10 Day Notice by registered mail stating that rent was owing in the amount of \$983.00.

On May 18, 2018, the Landlord accepted a payment of \$1,000.00, on May 29, a payment of \$300.00 and on June 28, 2018 a payment of \$265.00.

The Landlord testified although the rent is currently paid, since it was not paid within the five days provided under the *Act* after issuance of the 10 Day Notice on May 4, 2018, they are requesting an Order of Possession. They also stated that there has been a history of unpaid or underpaid rent with this tenancy and they do not want to risk it happening again. The Landlord agreed to provide until the end of August 2018 for the Tenant to move.

The Tenant testified that he received the notification of registered mail from the 10 Day Notice, but was unable to go into town to get the mail until May 14, 2018. The registered mail receipt was submitted in evidence by the Landlord confirming the date the package

was claimed as May 14, 2018. The registered mail tracking number is included on the front page of this decision.

The Tenant testified that his sister paid \$1,000.00 on May 18, 2018 and they both believed that this would reinstate the tenancy, since there was no more rent owing.

The Tenant also stated that a payment of \$300.00 was made on May 29, 2018 for June rent, and a payment of \$265.00 on June 28, 2018 for July rent. The Tenant confirmed that he received receipts for these payments.

The Tenant's advocate testified that the Tenant has some disabilities that make it difficult to get around and that he is also not able to use a computer. These challenges made it hard to deal with the 10 Day Notice, and also meant he was not able to pick up the notice until May 14, 2018 when he was able to get help getting into town.

The Tenant's sister called into the hearing as a witness. She confirmed that she has made payments of \$1,000.00, \$300.00 and \$265.00, and has therefore overpaid the amount of rent that was due. She stated that she was not aware of the Tenant being behind on rent, but took care of the issue as soon as she became aware.

She is willing to continue making sure rent payments are made on time and that the Tenant is not behind on rent again. She testified that when she made the payment of \$1,000.00 on May 18, 2018, the Landlord did not tell her that the tenancy would still be ending and it was her understanding that the tenancy would continue.

The Tenant and the witness for the Tenant both testified that the tenancy should continue as the rent is now up to date and will continue to be paid in full and on time moving forward.

During the hearing, settlement was brought up as an option, but the parties were not able to come to a possible settlement agreement.

### Analysis

The Tenant and Landlord were in agreement that the outstanding rent has been paid and no current amount is due. However, the parties were not in agreement as to whether the payment of \$1,000.00 on May 18, 2018 reinstated the tenancy.

I refer to Section 39(4) of the *Act* which states the following:

- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect,
  - or
  - (b) dispute the notice by making an application for dispute resolution.

The evidence shows that the 10 Day Notice was signed on May 4, 2018 and sent to the Tenant by registered mail on the same day. The registered mail tracking number shows the package as claimed by the Tenant on May 14, 2018, which was also confirmed by the Tenant.

The outstanding rent in the amount of \$983.00, as stated on the 10 Day Notice, was paid through a payment of \$1,000.00 made on May 18, 2018.

Section 39(5) of the *Act* states that if a tenant does not pay the rent owing or file an application to dispute the notice within 5 days, they are conclusively presumed to have accepted that the tenancy will end on the effective date of the notice.

Although the 10 Day Notice was dated May 4, 2018 and the outstanding rent was not paid until May 18, 2018, I find that the Tenant did not receive the 10 Day Notice until May 14, 2018 and paid the outstanding rent on May 18, 2018.

I refer to *Residential Tenancy Policy Guideline 12: Service Provisions* which states that a document sent by registered mail is deemed to have been received five days after it is sent, unless there is evidence to the contrary. I accept the evidence before me that the 10 Day Notice was received on May 14, 2018. I also accept the testimony of the Tenant, the advocate for the Tenant and the witness for the Tenant, that due to his personal circumstances, the Tenant was unable to get into town to pick up the mail any earlier than May 14, 2018. As the outstanding rent was paid in full on May 18, 2018, I determine that the Tenant paid the rent within five days of receiving the notice, as allowable under Section 39(4) of the *Act*.

Based on the above analysis, I find that the Tenant's payment of \$1,000.00 on May 18, 2018, cancelled the 10 Day Notice. Therefore, the 10 Day Notice, dated May 4, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I also caution the Landlord that any amount of rent that has been overpaid must be returned to the Tenant or deducted from a future rent payment.

As the Landlord was not successful with their application, I decline to award the Landlord the recovery of the filing fee paid for this Application for Dispute Resolution.

### Conclusion

The 10 Day Notice dated May 4, 2018 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*. Therefore, I dismiss the Landlord's Application for Dispute Resolution in its entirety and without leave to reapply.

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: July 10, 2018

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Residential Tenancy Branch