



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Spruce Capital Trailer Park Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPRM – DR, FFL

### Introduction

This matter was conducted by way of Direct Request Proceeding, pursuant to Section 48(4) of the *Manufactured Home Park Tenancy Act (Act)* and dealt with an Application for Dispute Resolution by the landlord for an order of possession and a monetary order due to unpaid rent. A participatory hearing was not convened.

The landlord submitted a signed Proof of Service of the Notice of Direct Request Proceeding which declares that on November 29, 2018 the landlord served the tenant with the Notice of Direct Request Proceeding via registered mail. Section 83 of the *Act* states a document sent by mail is deemed served on the 5<sup>th</sup> day after it is mailed.

Based on the written submissions of the landlord, I find that the tenant has been sufficiently served with the Dispute Resolution Direct Request Proceeding documents pursuant to the *Act*.

While the landlord has submitted a Proof of Service document and other evidence related to the issuance of a One Month Notice to End Tenancy for Cause, the Direct Request process is not available to adjudicate issues related to One Month Notices and as such, I have not considered any of the evidence as it relates to any issue other than unpaid rent and the 10 Day Notice to End Tenancy for Unpaid Rent.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for unpaid rent and to a monetary order for unpaid rent and to recover the filing fee for the cost of this Application for Dispute Resolution, pursuant to Sections 39, 48, 60, and 65 of the *Act*.

### Background and Evidence

The landlord submitted the following documentary evidence:

- A copy of a residential tenancy agreement which was signed by the parties on October 20, 2018 for a month to month tenancy beginning on October 1, 2018 for the monthly rent of \$314.00 due on the 1<sup>st</sup> of each month; and
- A copy of a 10 Day Notice to End Tenancy for Unpaid Rent that was issued on November 2, 2018 with an effective vacancy date of November 12, 2018 due to \$314.00 in unpaid rent.

Documentary evidence filed by the landlord indicates the tenant failed to pay the full rent owed for the month of November 2018 and that the tenant was served the 10 Day Notice to End Tenancy for Unpaid Rent by posting it to the manufactured home door on November 2, 2018 at 12:00 p.m. and that this service was witnessed by a third party.

The Notice states the tenant had five days to pay the rent or apply for Dispute Resolution or the tenancy would end. The landlord's evidence confirms the tenant paid the rent in full on November 8, 2018, plus a late payment fee.

### Analysis

Section 39 of the *Act* states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy effective on a date that is not earlier than 10 days after the date the tenant receives the notice.

Section 39(4) says that within 5 days after receiving a notice under this section, the tenant may either pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an application for dispute resolution.

I have reviewed all documentary evidence and accept that the tenant has been served with notice to end tenancy as declared by the landlord. The notice is deemed to have been received by the tenant on November 5, 2018, pursuant to Section 83 of the *Act*. As a result, I find the tenant had until November 10, 2018 to pay the rent in full to comply with Section 39(4) to render the Notice to End Tenancy in effective.

From the landlord's submissions the tenant paid the rent in full on November 8, 2018. Therefore, I find the tenant paid the rent within the allowable 5 days. I find the 10 Day Notice to End Tenancy for Unpaid Rent issued on November 2, 2018 is of no effect.

Furthermore, dispute the landlord's claim for a monetary order in the amount of \$314.00 for unpaid rent, I note that on the date that the landlord applied (November 26, 2018) the tenant did not owe the landlord any rent. As such, I find the landlord is not entitled to a monetary order as claimed.

### Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution in its entirety 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: December 07, 2018

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Residential Tenancy Branch