



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, RR, PSF, FF

On February 27, 2019, the Tenant made an Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* (“the Act”) seeking to reduce rent for repairs, services or facilities agreed upon but not provided and for an order that the Landlord provide services or facilities required by the tenancy agreement or law. On March 7, 2019, the Tenant amended the application to include the dispute of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, received on March 5, 2019.

The matter was set for a conference call hearing. The Tenant and Landlords attended the teleconference hearing. The Tenant was assisted by legal counsel.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

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 and Procedural Matters

The Residential Tenancy Branch Rules of Procedure permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. For example, if a party has applied to cancel a notice to end tenancy, or is applying for an order of possession, an Arbitrator may decline to hear other claims that have been included in the application and the Arbitrator may dismiss such matters with or without leave to reapply.

I find that the most important matter to determine is whether or not the tenancy has ended due to a fundamental breach of the tenancy agreement regarding payment of rent.

The Tenant's other claims are dismissed with leave to reapply.

#### Issues to be Decided

- Did the Tenant fail to pay the rent owing under the tenancy agreement within 5 days of receiving the 10 Day Notice?
- Is the Landlord entitled to an order of possession?

#### Background and Evidence

The parties testified that the tenancy began approximately 17 years ago and the site rental is on a month to month basis. Site rent in the amount of \$250.00 is due to be paid to the Landlord by the first day of each month.

The Landlord testified that the Tenant failed to pay the rent when it was due under the tenancy agreement.

The Landlord testified that the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 5, 2019, ("the 10 Day Notice").

The Landlord testified that the Tenant was served with the 10 Day Notice in person on March 5, 2019. The 10 Day Notice states that the Tenant has failed to pay rent in the amount of \$1,750.00 which was due on March 1, 2019. The 10 Day Notice informed the Tenant that the Notice would be cancelled if the rent was paid within five days. The Notice also explains the Tenant has five days to dispute the Notice.

The Tenant disputed the 10 Day Notice on March 7, 2019, within the required timeframe.

The Landlord testified that the Tenant had not paid the rent owing under the tenancy agreement for seven months (September 2018, October 2018, November 2018, December 2018, January 2019, February 2019, and March 2019).

The Landlord testified that the Tenant owed \$1,750.00 in unpaid rent but only sent the Landlord three post-dated cheques of \$250.00 each for the months of February, March and April 2019. The Landlord testified that he returned the cheques to the Tenant because the Landlord has never accepted personal cheques for payment of rent. The Landlord testified that the Tenant provided these three cheques prior to the date the 10 Day Notice was issued to the Tenant.

The Landlord served the 10 Day Notice to the Tenant and the Landlord testified that the Tenant did not pay the \$1,750.00 in rent owing within five days of receiving the 10 Day Notice.

The Landlords testified that on March 20, 2019, they received six bank drafts of \$250.00 from the Tenant for the total amount of \$1,500.00.

The Landlord is seeking to end the tenancy because the Tenant failed to pay the rent owing within five days of receiving the 10 Day Notice.

In reply, the Tenant's counsel submitted that the Tenant sent the bank drafts to the Landlord on February 21, 2019, which is prior to the date the 10 Day Notice was issued. The Tenant's counsel submitted that they provided a copy of the registered mail receipt and address label in support of the proof of payment.

The Tenants counsel submitted that the Landlord came to see the Tenant and returned the three hand written cheques. The Tenants counsel submitted that the Landlord should have accepted the three personal cheques and since the Landlord refused to accept them the Tenant did not fail to pay the rent.

The Landlords pointed out that the Tenant's documentary evidence of the registered mail slip contains an incorrect delivery address for the Landlord.

The Landlord responded by stating that the Landlords have never accepted personal cheques and the Tenant was aware of this and always paid the rent in cash.

The Tenant's counsel asked the Tenant about this and the Tenant confirmed that he previously always paid the rent in cash.

The Landlords submitted that if they are successful in enforcing the 10 Day Notice to end the tenancy, they are willing to give the Tenant additional time to make

arrangements to leave the site. The Landlords submitted that they will give the Tenant three months.

### Analysis

Section 20 of the Act states that a Tenant must pay the rent when it is due under the tenancy agreement, whether or not the Landlord complies with the 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.

Section 39 of the Act provides that 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.

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I find that the Tenant received the 10 Day Notice on March 5, 2019. I find that the Tenant had until March 10, 2019, to pay all the outstanding rent as provided in the 10 Day Notice.

I find that the Landlord did not receive the rent payments sent by the Tenant using registered mail on February 21, 2019, because the Tenant sent the payments to an incorrect address. I find that the Landlords received \$1,500.00 from the Tenant on March 20, 2019.

I have considered the argument submitted by the Tenant's counsel that the rent was not late because the Landlord had earlier refused to accept personal cheques. I am not persuaded by the argument because the issue before me is whether or not the all the rent was paid within five days of the Tenant receiving the 10 Day Notice. The Tenant did not issue the Landlord a personal cheque for all the rent within five days of receiving the 10 Day Notice.

If the Tenant wanted to dispute the Landlords refusal to accept personal cheques the Tenant could have applied for dispute resolution; however, under section 20 of the Act, the Tenant must pay the rent when it is due under the agreement, and under section 39 of the Act must pay the rent owing within five days of receiving a 10 Day Notice.

Further to the submission regarding the personal cheques, I note that prior to the issuance of the 10 Day Notice, the Tenant only provided three personal cheques amounting to \$750.00 when \$1,500.00 in rent was outstanding at that point. Even if the Landlord had accepted the three personal cheques the Tenant still owed rent in arrears.

I find that the Tenant failed to pay the rent owing under the tenancy agreement within five days of receiving the 10 Day Notice. I find that the Tenant did not have a legal right under the Act to withhold payment of the rent. I find that the Tenant has breached section 20 of the Act and has fundamentally breached the tenancy agreement that requires payment by the first day of each month. The tenancy is ending.

I dismiss the Tenant's application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated March 5, 2019.

Under section 48 of the Act, when a Tenants Application to cancel a Notice to end tenancy is dismissed and I am satisfied that the notice to end tenancy complies with the requirements under section 45 regarding form and content, I must grant the Landlord an order of possession.

I find that the 10 Day Notice complies with the requirements for form and content and I find that the Landlord is entitled to an order of possession.

Since the Landlord generously offered to permit additional time for the Tenant to move off the site, I grant the Landlord an order of possession for the site effective no later than 1:00 pm on July 31, 2019, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

### Conclusion

I find that the Tenant has breached section 20 of the Act and has fundamentally breached the tenancy agreement that requires payment by the first day of each month.

The Tenant failed to pay the rent due under the tenancy agreement within five days of receiving a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and did not have a legal right to withhold payment of the rent.

The tenancy is ending.

The Landlord is granted an order of possession effective no later than 1:00 pm on July 31, 2019, after service on the Tenant

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: April 17, 2019

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Residential Tenancy Branch