



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNL-4M FFT**

### Introduction

This hearing dealt with the tenant's' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- authorization to recover the filing fee for this application from the landlord per section 72; and
- cancelation of a four month notice to end tenancy for conversion of rental unit issued pursuant to section 49(6) ("Notice").

The landlord did not call into the hearing for the duration of the hearing which started at 9:30AM and terminated at 10:10AM.

The tenant stated that on the evening of Thursday April 4, 2019 he served the landlord, TA, in person with the hearing notice and his evidence. TA accepted the documents from the tenant. I find the tenant has properly served the landlord per sections 89 & 90 of the Act.

Neither tenant nor landlord provided a copy of the tenancy agreement. As demonstrating the type of tenancy in place at the dispute address does not prejudice the landlord's position in this matter, pursuant to rule 3.19, I requested and received a faxed copy of the tenant's tenancy agreement and the most recent rent increase (#RTB-45).

### Issues to be Decided

- Is the tenant entitled to recover the filing fee for this application from the landlord?
- Is the four month notice to end tenancy for conversion of rental unit valid?

### Background and Evidence

The tenant provided the following undisputed testimony. The Notice (#RTB-29) was issued in person to the tenant on March 31, 2018 and provides August 1, 2019 as the effective date. The purpose for the Notice is to convert the rental unit to a non-residential use. The Notice is pursuant to section 49(6) of the Residential Tenancy Act. The tenant filed to dispute the Notice on April 2, 2019.

He purchased his manufactured home in 2006 and rents the site on which the home is located. He receives rent increases April of every year for the site. He is currently paying \$476.63 per month to rent a site in the manufactured home park.

The tenant asserted that the Notice by the landlord is not the correct notice. The landlord should be serving him with a 12 month notice under the Manufactured Home Park Tenancy Act.

### Analysis

The Residential Tenancy Branch Rules of Procedure 6.6 require a landlord to prove the reason for ending a tenancy when the tenant applies for dispute resolution to cancel the Notice.

As I find the landlord was properly served with the notice of this hearing and has failed to participate, I am cancelling the Notice.

Furthermore, based on the evidence before me, I find the landlord has issued an incorrect notice. The tenant rents a site from the landlord and owns his manufactured home. Therefore, the Manufactured Home Park Tenancy Act applies to this tenancy and a notice to convert the rental unit to a non-residential use must be issued under section 42 of that Act (#RTB-31).

### Conclusion

The Notice issued by the landlord is cancelled and has no force or effect. The tenancy continues until it is ended in accordance with the Manufactured Home Park Tenancy Act.

I award the tenant the cost of filing; pursuant to section 65 of the Manufactured Home Park Tenancy Act, authorize the tenant to withhold \$100.00 from rent.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 22, 2019

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Residential Tenancy Branch