



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VALLKEY VISTA ESTATES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OT, FFT

### Introduction

On August 29, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 40 of the *Manufactured Home Park Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

The Tenant attended the hearing; however, the Landlord did not make an appearance during the 14-minute conference call. The Tenant provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing and evidence package by hand on August 29, 2019. Based on this undisputed, solemnly affirmed testimony, and in accordance with Sections 82 and 83 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 48 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Tenant stated that the tenancy started on June 1, 2012 and rent is currently established at \$515.00 per month, due on the first day of each month. The rent is automatically deducted from the Tenant's bank account on the first day of each month.

She advised that the Landlord served the Notice by posting it on her door on August 20, 2019. The reasons the Landlord served the Notice are because the "Tenant has not done required repairs of damage to the unit/site" and due to a "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so." The Notice indicated that the effective end date of the tenancy was September 30, 2019.

The Tenant advised that the parties had settled the matter and the Landlord rescinded the Notice. She referenced the Landlord's evidentiary submission effectively acknowledging that they have rescinded the Notice as the issue has been dealt with already.

Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

The onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. As the Landlord has not appeared at the hearing, I am not satisfied that the Landlord has properly substantiated the grounds for ending the tenancy. Furthermore, the undisputed evidence is that the Landlord has rescinded the Notice. As such, I am not satisfied of the validity of the Notice, and I find that the Notice of August 20, 2019 is of no force and effect.

As the Tenant was successful in her application, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application.

### Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of August 20, 2019 to be cancelled and of no force or effect.

As the Tenant's rent is automatically and electronically debited on the first day of each month, the Tenant is provided with a Monetary Order in the amount of **\$100.00** in the above terms, and the Landlord must be served with **this Order** as soon as possible. Should the Landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that 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: October 15, 2019

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Residential Tenancy Branch