



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC CNR

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on October 22, 2019. The Tenant applied for multiple remedies, pursuant to the *Manufactured Home Park Tenancy Act* (the "Act").

Both parties attended the hearing and provided testimony. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlords confirmed they received the Tenant's notice of hearing and evidence package. The Landlords also confirmed they received the Tenant's amendment on September 18, 2019, where the Tenant applied to cancel the 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), as well as 2, 1-Month Notices to End Tenancy for Cause.

The Tenant also submitted a USB stick to the Landlords the night before the hearing, and did not provide this package of evidence to the Residential Tenancy Branch. As stated in the hearing, the Tenant was required, as per the rules of procedure (3.14), to ensure that the respondent receives her evidence no later than 14 days before the hearing. Given this evidence is very late, I find it is not admissible for the proceedings today.

The Tenant confirmed that she received the Landlord's evidence by USB stick on October 9, 2019. The Tenant spoke to the photos, and stated she was able to open them. I find the Landlords sufficiently served the Tenant with their evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

#### *Jurisdiction*

During the hearing, the Landlord raised the issue of jurisdiction. The parties also expressed that they had a previous hearing, several days before this hearing where jurisdiction was raised. The Landlords expressed that this is not a Manufactured Home Park Tenancy because it was only supposed to be short term. They also referenced section 4(1)(d) of the *Manufacture Home Act* to show that the type of trailer used by the Tenant is not included in that Act. I note the *Manufactured Home Act* is separate from the *Manufactured Home Park Tenancy Act*. As an Arbitrator, I am only permitted to hold hearings and decide issues as they relate the *Residential Tenancy Act*, and the *Manufactured Home Park Tenancy Act*, not the *Manufactured Home Act*. I find the excerpt from the Landlord is not helpful in determining jurisdiction. Further, the issue of jurisdiction was already decided upon for this tenancy at a previous hearing.

I note the parties had a hearing with respect to this tenancy (for different issues) on October 17, 2019. I note that following that hearing, that Arbitrator found that there was jurisdiction under the *Manufactured Home Park Tenancy Act* (the Act) to handle matters relating to this tenancy. I cannot re-hear, change or vary a matter already heard and decided upon as I am bound by the earlier decision, under the legal principle of *res judicata*. *Res judicata* is a rule in law that a final decision, determined by an Officer with proper jurisdiction and made on the merits of the claim, is conclusive as to the rights of the parties and constitutes an absolute bar to a subsequent Application involving the same claim. As it has already been determined that our branch has jurisdiction to hear this matter, I proceed on this basis, without further consideration.

#### *Adjournment issue*

During the hearing, I informed the parties that I would need to adjourn the hearing to a later date to hear the remaining issues behind the 1 Month Notices. This was done because we ran out of time in our one hour hearing. That being said, during the allotted

hearing time on October 22, 2019, there was sufficient time to hear from both parties with respect to the 10 Day Notice. I informed the parties I would adjourn so that we could move onto the 1 Month Notices. However, after further consideration, and after reviewing the totality of the testimony and evidence relating to the 10 Day Notice, I find an adjournment is no longer necessary. I find I have enough evidence to make a decision, based on the 10 Day Notice, and given my decision on the 10 Day Notice, it is not necessary to consider the merits of the 1 Month Notices. My analysis below will focus on the 10 Day Notice. The Tenant's application to cancel the 1 Month Notices are dismissed, without leave.

### Issue to be Decided

- Did the Tenant apply on time to dispute the Notice?
- Is the Tenant entitled to have the Landlord's 10 Day Notice to End Tenancy cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The parties agree that this has been a short-lived tenancy, and it has been contentious. The Tenant moved in at the beginning of June 2019. The Tenant moved a mobile home/park model home to the Landlord's property, and there have been issues with utilities, rent, and bylaw enforcement. The Landlord was under the impression that this did not fall under the Act, and as such, he started off by issuing written notices informing the Tenant that she needed to move her unit off the property around the end of July 2019. The Landlords stated they only ever wanted this to be a short term stay for the Tenant. The Tenant applied to cancel the written notice she received on August 6, 2019. A copy of this notice was provided into evidence, which shows that it was not issued on a proper form, and it was explained that this was not a valid notice, under section 45 of the Act. The only Notices, issued on the proper form, were the 10 Day Notice and the 1-Month Notices which the Tenant received on September 11, 2019.

The relationship continued to degrade over the month of August, and the Landlord issued 10 Day Notice and a 2, 1 Month Notices on September 10, 2019 (one from each of the Landlords). The Tenant acknowledged receiving all of these notices on September 11, 2019. These notices were also uploaded into evidence. The Tenant had already filed an application to cancel the notice she received on August 6, 2019 (which was not on the approved form), so she filed an amendment on September 18, 2019, to that application, to cancel both the 10 Day Notice and the 1 Month Notices she received

on September 11, 2019. The Landlords confirmed that they received the amendment from the Tenant on September 18, 2019.

The 10 Day Notice received by the Tenant on September 11, 2019, was for unpaid rent for August and September 2019, amounting to \$1,400.00. Both parties agree that monthly rent was \$700.00 and was due on the first of the month, and that there was no written agreement between them. The Landlords hold a security deposit in the amount of \$350.00. The Tenant has also not paid any rent to the Landlords for October, but feels she is entitled to withhold the rent due to some of the issues going on.

The Tenant stated that she tried to pay for August rent but the Landlords refused to accept it because they wanted her to leave. The Landlords offered the Tenant to keep her August rent so that she could use the money to move her trailer. The Tenant stated she had no intention of moving and did not accept this offer. The Landlords stated that the Tenant stayed, and never attempted to pay rent again after this point. The parties agree that the Tenant has not made any rent payments for August, September or October of 2019. However, the Tenant feels she is justified in withholding rent because of her issues with utility hook ups, and the subsequent disputes.

There were 2, 1 Month Notices issued and received by the Tenant on September 11, 2019. These 1 Month Notices were issued for several reasons and were uploaded into evidence. However, they were not the focus of this hearing.

The Tenant applied to dispute the 10 Day Notice and the 1 Month Notices on September 18, 2019, the date she filed her amendment with our office and served the Landlord with the amendment. The Tenant did not apply for more time to make an application to dispute these Notices.

### Analysis

Based on the testimony and documentary evidence, and on a balance of probabilities, I find:

First, I turn to the 10 Day Notice. After reviewing the 10 Day Notice which the Tenant received on September 11, 2019, I am satisfied that it complies with section 45 of the *Act [form and content of notice to end tenancy]*. Section 45 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the manufactured home site, state the effective date of the notice,

state the grounds for ending the tenancy (unpaid rent for August and September 2019), and be in the approved form.

Section 39 of the *Act* permits a landlord to end a tenancy for non-payment of rent. A tenant who receives a 10 Day Notice has 5 days after receipt to dispute it by making an application for dispute resolution or paying all outstanding rent in full. Failure to dispute the notice in this period results in the conclusive presumption that the tenant has accepted the end of the tenancy, under section 39(5) of the *Act*.

In this case, the Tenant acknowledged receipt of the 10 Day Notice on September 11, 2019. The tenant had 5 days, until September 16, 2019, to dispute the 10 Day Notice, but she did not do so until September 18, 2019. Further, the Tenant did not apply for more time to make an application to dispute this 10 Day Notice. Further, I note the Tenant tried to pay August 2019 rent, but the Landlords turned this down because they wanted the Tenant to move off the property. I also note the Tenant refused to leave. I find this is a clear indication that the Tenant did not accept the Landlords' offer to not pay rent for August so that she could help pay to move her trailer off the property.

Since the Tenant did not accept the Landlords' offer, and she wanted to remain living on the property, I find she should have paid rent. I do not find it is reasonable to expect to continue to live on the property, without paying any rent. In making this finding, I have considered the issues around the utilities, which the Tenant feels is grounds to withhold rent. However, I note she has not presented sufficient evidence to show that she has any legal basis to withhold rent under the *Act*. The Tenant should have applied for dispute resolution and obtained permission to withhold rent, due to the issues she had, rather than assume she can withhold this rent, ongoing, until the matters are resolved. In any event, the amount the Tenant owed at the time the 10 Day Notice was issued was for 2 months' rent (August and September, totalling \$1,400.00). Even if I accepted that rent wasn't due for August, because of an offer (which she declined) from the Landlords to keep rent that month and use the money to move, there is still another \$700.00 in unpaid rent for September.

The Tenant had at least some rent outstanding at the time the Notice was issued, and she failed to pay this off within 5 days of getting the Notice. She also did not apply to cancel the 10 Day Notice within the 5 days permitted under the *Act*. Pursuant to section 39(5) of the *Act*, I find the tenant is conclusively presumed to have accepted the end of the tenancy on the effective date of the Notice, September 20, 2019.

The Landlord is entitled to an order of possession, which will be effective **two days after service** on the tenant.

Given my findings thus far, and since the tenancy is ending by way of the 10 Day Notice, it is not necessary to consider the merits of the 1 Month Notices, nor is it necessary to adjourn in order to hear the issues behind the 1 month Notices.

### Conclusion

The Tenant did not apply on time to dispute the Notice and his application is dismissed.

The landlord is granted an order of possession effective **two days after service** on the tenant. This order must be served on the tenant. If the tenants fail to comply with this order the landlord may file the order with the Supreme Court of British Columbia and be 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 24, 2019

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Residential Tenancy Branch