



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HYGGE HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDCT, DRI, RR, OLC, FFT

### Introduction

On March 22, 2021, the Tenants submitted an Application for Dispute Resolution under the *Manufactured Home Park Tenancy Act* (the “Act”) requesting to cancel a 10 Day Notice to End Tenancy for Unpaid Rent, to request a Monetary Order for compensation, to dispute a rent increase, to reduce the rent, to order the Landlord to comply with the Act, and to recover the cost of the filing fee. The matter was set for a participatory hearing via conference call.

The Landlord, the Tenants and the Tenants’ legal counsel attended the hearing and provided affirmed testimony. They were provided the opportunity to present their relevant oral, written and documentary evidence and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

### Preliminary Matter

The Tenants submitted six separate claims as part of this Application, and I was aware that we would not have the time to get to all of them during today’s hearing. I asked the Tenants to prioritize the issues that they wanted to address in this hearing; the Tenants stated that they wanted to firstly address the request to cancel the 10 Day Notice to End Tenancy. For these reasons, I dismiss the request for a Monetary Order for compensation, to reduce the rent, to dispute a rent increase and to order the Landlord to comply with the Act, with leave to reapply in accordance with Rule 2.3 in the *Residential Tenancy Branch – Rules of Procedure*.

### Issues to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent, dated March 17, 2021 (the “10 Day Notice”) be cancelled, in accordance with section 39 of the Act?

If the 10 Day Notice is not cancelled, should the Landlord receive an Order of Possession, in accordance with section 48 of the Act?

Should the Tenant be compensated for the cost of the filing fee, in accordance with section 65 of the Act?

### Background and Evidence

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.

The Tenants submitted a Tenancy Agreement and stated they moved into the Manufactured Home Park on December 2, 2006. The Tenants stated that they believed that the tenancy continued when the Landlord purchased the Manufactured Home Park in 2015.

The Landlord submitted a 2-page Tenancy Agreement, dated January 10, 2015. The Landlord stated that he believed that a new tenancy was established when the Tenants signed this form.

Both parties agreed that the monthly rent is \$749.00 and due on the first day of each month.

The Landlord testified that the Tenants failed to pay rent for January, February and March 2021 and that he served the 10 Day Notice to the Tenants via email on March 17, 2021. He stated that the Tenants owed the Landlord \$4,494.00 in outstanding rent as of March 1, 2021 and that he included this amount on the 10 Day Notice.

The Landlord stated that he had had several conversations with the Tenants about not receiving their post-dated cheques. The Landlord acknowledged that he has difficulty receiving both regular and registered mail from Canada Post; furthermore, the Landlord has ordered the Tenants, on the threat of police attendance, that they do not personally attend his place of business/personal residence.

The Landlord testified that he received an e-transfer of \$2,247.00 from the Tenants on March 18, 2021. The Landlord stated that he received payments for "use and occupancy" from the Tenants on April 1, 2021 and May 1, 2021.

The Landlord stated that the Tenants have not fully paid their rent. The Landlord acknowledged that he could not prove whether the Tenants have paid their rent or not; that he has no evidence to submit to demonstrate that there is any outstanding rent; and, that he's "blind on my side" when it comes to establishing if any rent is in arrears for the Tenants.

The Landlord requested an Order of Possession if the 10 Day Notice is found valid.

The Tenants testified and also submitted an affidavit, that included documentary evidence, from Tenant CG that included the following:

- In early December 2020, the Tenant mailed the Landlord 7 post-dated cheques in the amount of \$749.00 each for the purposes of paying rent from January to July 2021.
- In early February 2021, the Tenant noticed that the Landlord had not cashed the January or February 2021 rent cheques. The Tenant emailed the Landlord who responded that he had not received the cheques. The Tenant cancelled the seven cheques and sent 7 new cheques by registered mail to the Landlord on February 22, 2021.
- On March 15, 2021, the Landlord emailed the Tenant to advise her that she had not received any rent cheques. Upon review of the Canada Post tracking website, the Tenant noted that a notice card had been left for the Landlord on February 24, 2021, indicating where and when to pick up the package of cheques.
- On March 17, 2021, the Landlord emailed the Tenant the 10 Day Notice.
- On March 18, 2021, the Tenant emailed the Landlord to advise him that she had e-transferred him rent for January to March 2021, in the amount of \$2,247.00.
- On April 1, 2021, the Tenant emailed and e-transferred the Landlord rent for April 2021.
- Despite having paid April 2021 rent and having no other rental arrears, the Landlord emailed the Tenant on April 1, 2021 with another 10 Day Notice to End Tenancy for Unpaid Rent. This notice was undated and unsigned by the Landlord and stated that the Tenants owed \$749.00 in outstanding rent.
- On May 1, 2021, the Tenant emailed and e-transferred the Landlord rent for May 2021.

The Tenants stated that they want to stay in the manufactured home park and have made every effort to pay their rent on time; however, have been limited by the Landlord refusing to accept registered mail or personal service.

The Tenants request that the two 10 Day Notices to End Tenancy be cancelled, and to establish a way they can pay rent to the Landlord that is secure and trackable.

### Analysis

Section 39 of the Act authorizes a landlord to 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. The tenant, within 5

days after receiving the notice, may pay the overdue rent, in which case the notice has no effect, or dispute the notice by making an Application for Dispute Resolution.

In this case, I accept the Tenants' testimony and documentary evidence that they attempted to send the Landlord post-dated rent cheques for January to July 2021 on two different occasions and that the Tenants were the ones to initiate the conversation with the Landlord about not cashing the rent cheques. Based on the Landlord's testimony, I accept that the Landlord may not have received the post-dated cheques sent by the Tenants on two separate occasions. Nevertheless, after receiving the 10 Day Notice, I find that the Tenants paid the outstanding rent, via e-transfer, within 5 days of receiving the notice, on March 18, 2021, pursuant to section 39 of the Act.

The LL claimed that there was still an amount of outstanding rent owing from the Tenants; however, was unable to provide a specific amount or any documentary evidence to support that the Tenants had any rental arrears.

Without any evidence to the contrary, I find that the Tenants have fully paid their rent as of March 18, 2021. As such, I find that the 10 Day Notice has no effect, pursuant to section 39, and I uphold the Tenants' Application to cancel the 10 Day Notice.

Based on both the Landlord's and Tenants' evidence, I find that the Tenants paid their rent on time for both April and May 2021. Therefore, I also cancel the undated Notice to End Tenancy for Unpaid Rent that was sent to the Tenants via email on April 1, 2021.

During the hearing, it became clear that there is conflict between the parties regarding the terms of service, payment of rent and the current balance of rent that is owing. As this tenancy will be continuing and as a means to provide clarity, I make the following authorizations and orders in accordance with sections 55(3) and 64(2) of the Act.

1. The Tenants are authorized to pay their monthly rent via e-transfer.
2. Email is an authorized way to give or serve documents during this tenancy. Specifically, the documents referred to in both sections 81 and 82 of the Act.
3. Unless there is clear documentary evidence to the contrary, the Tenants have fully paid their rent up until May 31, 2021.

I find that the Tenants' Application has merit and that the Tenants are entitled to recover the cost of the filing fee for this Application for Dispute Resolution, in the amount of \$100.00, pursuant to section 65 of the Act.

As compensation for the filing fee, I authorize the Tenants to deduct \$100.00 from a future rent payment to the Landlord, in accordance with section 65 of the Act.

Conclusion

Both the 10 Day Notice and the undated Notice to End Tenancy for Unpaid Rent are cancelled and of no effect. This tenancy will continue until ended in accordance with the Act.

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: May 26, 2021

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Residential Tenancy Branch