



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNR FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the "**Act**") for:

- cancellation of the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the "**Notice**") pursuant to section 39; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

The tenant did not attend this hearing, although I left the teleconference hearing connection open until 9:47 am in order to enable the tenant to call into this teleconference hearing scheduled for 9:30 am. The landlord's manager ("**NS**") attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that NS and I were the only ones who had called into this teleconference.

The landlord testified that he was never served with a copy of the tenant's application. He testified that he learned of the application when he called into the Residential Tenancy Branch to see if the tenant had disputed the Notice (if not, he intended to make his own application for an order of possession based on the Notice). He testified that he personally served the tenant with copies of his documentary evidence package on July 29, 2021.

Rule of Procedure 6.6 states:

### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy

As such, despite the fact that this is the tenant's application, the landlord bears the evidentiary burden the Notice is valid (as opposed to the tenant bear the burden to prove the Notice is invalid). Additionally, as the landlord recently served the tenant with copies of his documentary evidence, I am satisfied that the tenant knew, or reasonably ought to have known, that the landlord intended to attend the hearing and oppose the cancellation of the Notice.

NS testified that the tenant had misspelled the landlord's (which is a company) name by writing a "G" as the last letter of the first word in the name, rather than an "E". I order that the application be amended to fix this typo.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) an order cancelling the Notice; and
- 2) recover the filing fee?

If not, is the landlord entitled to:

- 1) an order of possession (per section 48(1) of the Act); and
- 2) a monetary order for rental arrears (per section 48(1.1) of the Act).

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of NS, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The parties entered into a written tenancy agreement starting August 1, 2014. Monthly rent is currently \$354 and is due on the first of each month. The tenant owns the manufactured home located on the manufactured home site.

NS testified that the tenant has been habitually late in paying rent. He submitted a ledger showing the payments made and the rent owing as follows:

Date	Rent Owed	Paid	Balance
Feb-20	\$354.00	\$0.00	\$354.00
Mar-20	\$354.00	\$0.00	\$708.00
Apr-20	\$354.00	\$0.00	\$1,062.00
May-20	\$354.00	\$0.00	\$1,416.00
Jun-20	\$354.00	\$1,500.00	\$270.00
Jul-20	\$354.00	\$0.00	\$624.00
Aug-20	\$354.00	\$0.00	\$978.00

Sep-20	\$354.00	\$650.00	\$682.00
Oct-20	\$354.00	\$0.00	\$1,036.00
Nov-20	\$354.00	\$0.00	\$1,390.00
Dec-20	\$354.00	\$0.00	\$1,744.00
Jan-21	\$354.00	\$0.00	\$2,098.00
Feb-21	\$354.00	\$400.00	\$2,052.00
Mar-21	\$354.00	\$420.00	\$1,986.00
Apr-21	\$354.00	\$475.00	\$1,865.00
May-21	\$354.00	\$400.00	\$1,819.00
Jun-21	\$354.00	\$0.00	\$2,173.00
Jul-21	\$354.00	\$0.00	\$2,527.00
<b>Total</b>	<b>\$6,372.00</b>	<b>\$3,845.00</b>	<b>\$2,527.00</b>

The ledger also includes arrears owed for:

- 1) rental of a storage area (which is not part of the tenancy agreement) in the amount of \$725; and
- 2) late fees in the amount of \$275.

These amounts are not included in the chart above and the landlord does not allege that they constitute “rent” under the Act.

NS testified that in August 2021, the tenant paid off all arrears owed, and is not current on her account. He submitted a receipt for one such payment, which states that the payment was accepted for use and occupancy only.

NS testified that the landlord applied any payments it received from the tenant to arrears accrued by the tenant between March 18, 2020 and August 17, 2020 (the “specified period”, as defined in the Order in Council 475/2020 COVID-19 (No.2) made August 14, 2020) before it applied them to arrears accrued after.

NS testified that on March 12, 2021 he offered the tenant a repayment plan for arrears accrued. He testified that the tenant refused to sign such an agreement or make payments pursuant to it. He did not submit a copy of this agreement into evidence.

On April 9, 2021, NS served the tenant with a copy of the Notice by posting it on the door of the manufactured home. It specified an effective date of April 30, 2021, and specified arrears of \$1,865 were owing as of April 1, 2021.

The tenant disputed the Notice on April 12, 2021.

### **Analysis**

I accept NS’s undisputed evidence in its entirety. I find that the tenant must pay \$354 a month in rent. Based on the ledger, she owed \$1,865 as of April 1, 2021.

I accept NS's evidence that the landlord applied any payments received after the specified period to arrears accrued during the specified period until those arrears were paid off. The permissibility of such practices has been considered by the courts. In *Corey Bros. & Co., Ltd. v. The "Mecca"*, [1887] A.C. 286 (H.L.), the court held:

"...if the debtor does not make any appropriation at the time when he makes the payment the right of application devolves in the creditor....But it has long been held and it is now quite settled that the creditor has the right of election 'up to the very last moment,' and he is not bound to declare his election in express terms. He may declare it by bringing an action or in any other way that makes his meaning and intention plain....The presumed intention of the creditor may no doubt be gathered from a statement of account, or anything else which indicates an intention one way or the other and is communicated to the debtor, provided there are no circumstances pointing in an opposite direction. But so long as the election rests with the creditor, and he has not determined his choice, there is no room, as it seems to me, for the application of rules of law such as the rule of civil law, reasonable as it is, that if the debts are equal the payment received is to be attributed to this debt first contracted." (at pp. 293-294)

[emphasis added]

This passage was affirmed by the Supreme Court of Canada in *Waisman & Ross v Crown Trust*, [1970] SCR 553, which, in turn has been cited with approval by several courts in British Columbia (*Fill-More Seeds Inc. v Victoria Seeds Inc.*, 2009 BCSC 1732, for example)

Put simply, at the time the payment is made, the debtor (in this case, the tenant) may indicate which debt the payment should be applied to. If the debtor does not, then the creditor (in this case, the landlord) may assign the payment as he sees fit. I have no evidence to suggest that the tenant indicated which arrears the payments she made should be attributed to, as such, the landlord was entitled to apportion them as it saw fit.

The tenant was to have paid \$1,770 in rent during the specified period. She paid \$1,500 in June 2020, which would have been attributed to arrears accrued for April, May, and June 2020. The tenant still owed \$708 in arrears for July and August 2020, which she paid via payments of \$650 in September 2020 and \$400 in February 2021. As such, I find that no arrears for the specified period are due or owing.

As such, I find that the tenant of \$1,865 in arrears accrued outside of the specified period. As such, I find that the Notice correctly stated the amount of arrears owed and complies with the form and content requirements of section 45 of the Act.

Section 39 of the Act states:

**Landlord's notice: non-payment of rent**

39(1) 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.

(2) A notice under this section must comply with section 45 *[form and content of notice to end tenancy]*.

[...]

(4) Within 5 days after receiving a notice under this section, the tenant may

- (a) pay the overdue rent, in which case the notice has no effect, or
- (b) dispute the notice by making an application for dispute resolution.

The tenant disputed the Notice within the require time. However, I have no basis to think that the Notice was not valid. As I have already found, the arrears set out on it were owing and it meets with the form and content requirements of section 45. The landlord has satisfied me that the Notice was issued for valid reasons.

The tenant's payment of the balance of the arrears owed in August 2021 does not have the effect of cancelling the Notice or causing it to become invalid. A complete payment of arrears owed will only have the effect of cancelling a Notice if it is done within five days of the Notice being served as per section 39(4) of the Act. For me to order the Notice cancelled based on the payments of arrears in August 2021 would not be consistent with the Act as it would deprive section 45(4)(b) of all meaning. Additionally, the August payments did not have the effect of reinstating the tenancy, as the landlord accepted them for "use and occupancy only", as indicated on the receipt submitted into evidence.

As such, I find that the Notice is valid. I dismiss the tenant's application to cancel it, without leave to reapply.

Sections 48(1) and (1.1) of the Act state:

**Order of possession for the landlord**

48(1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if

- (a) the landlord's notice to end tenancy complies with section 45 *[form and content of notice to end tenancy]*, and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(1.1) If an application referred to in subsection (1) is in relation to a landlord's notice to end a tenancy under section 39 *[landlord's notice: non-payment of rent]*, and the circumstances referred to in subsection (1) (a) and (b) of this section apply, the director must grant an order requiring the payment of the unpaid rent.

As the tenant has already paid the arrears listed on the Notice, I decline to make any order pursuant to section 48(1.1).

As I have dismissed the tenant's application, without leave to reapply, as I have found that the Notice is valid, and as the tenant has paid rent for August 2021, I order that the tenant deliver vacant possession of the manufactured home site to landlord by August 31, 2021 at 1:00 pm.

As the tenant has been unsuccessful in disputing the Notice, I decline to order that the landlord reimburse her the filing fee.

### **Conclusion**

I dismiss the tenant's application, in its entirety, without leave to reapply.

Pursuant to section 48 of the Act, I order that the tenant deliver vacant possession of the manufactured home site to the landlord by August 31, 2021 at 1:00 pm.

**I order the landlord to serve the tenant with a copy of this decision and attached order as soon as possible upon receipt from the Residential Tenancy Branch.**

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: August 17, 2021

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Residential Tenancy Branch