



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FFL  
                             OPR-DR, MNR-DR, FFL

### Introduction

This hearing was convened by way of conference call in response to two Applications for Dispute Resolution filed by the Landlord (the “Applications”). The Landlord applied for the following on September 08, 2021:

- An Order of Possession based on a One Month Notice to End Tenancy for Cause dated August 12, 2021 (the “One Month Notice”)
- To recover the filing fee

The Landlord applied for the following on December 15, 2021:

- An Order of Possession based on a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated December 06, 2021 (the “10 Day Notice”)
- To recover unpaid rent
- To recover the filing fee

The Landlord appeared at the hearing with P.T., their representative. The Landlord was going to call a witness at the hearing; however, P.T. decided this was not necessary at the end of the hearing. The Tenant appeared at the hearing.

The parties agreed the Tenant is not living at the site; however, still has their recreational vehicle parked on the site.

I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Tenant testified that they received both hearing packages for the Applications as well as the Landlord's evidence, other than text messages. Later in the hearing, the Tenant testified that they received the hearing packages from the RTB September 21, 2021. I did not go into service of the hearing packages further as I find it sufficient that the Tenant received these September 21, 2021, whether from the Landlord or RTB.

P.T. testified that all of the Landlord's evidence was served on the Tenant.

P.T. testified that the Landlord received the Tenant's evidence.

The Landlord submitted one text message chain. Pursuant to rule 3.17 of the Rules, I have not considered this text message chain because I am not satisfied it was served on the Tenant as required by rule 3.14 of the Rules because the parties gave conflicting testimony on this point and there is no further evidence before me showing what was served on the Tenant.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the One Month Notice?
2. Is the Landlord entitled to an Order of Possession based on the 10 Day Notice?
3. Is the Landlord entitled to recover unpaid rent?
4. Is the Landlord entitled to recover the filing fees?

#### Background and Evidence

P.T. testified that there is a verbal tenancy agreement between the parties which started June 17, 2021 and was for a fixed term of one month. P.T. testified that rent is \$600.00 per month due on the first day of each month.

The Tenant confirmed they lived at the site as a permanent residence and did not have another residence. The Tenant agreed there is a tenancy agreement between the parties. The Tenant testified that the tenancy started June 17, 2021 and is a month-to-month tenancy and rent is \$600.00 per month due on the first day of each month.

The One Month Notice was submitted. The One Month Notice has an effective date of August 12, 2021.

P.T. testified that the One Month Notice was posted to the door of the Tenant's recreational vehicle July 12, 2021 and referred to a photo in evidence. The Tenant testified that they cannot remember when they received the One Month Notice but it could have been around July 12, 2021.

The Tenant confirmed they did not file a dispute of the One Month Notice with the RTB.

The Tenant submitted that the Landlord reinstated the tenancy by accepting rent after the One Month Notice was issued.

P.T. disagreed that the tenancy was reinstated and testified that the Tenant sent an e-transfer September 01, 2021 which the Landlord did not accept because they did not want to reinstate the tenancy. P.T. testified that the Landlord has not accepted any rent payments after the One Month Notice was issued because they did not want to reinstate the tenancy.

The Tenant could not point to further evidence showing the Landlord accepted rent payments after the One Month Notice was issued and said they did not know this was going to be relevant.

The Tenant submitted an e-transfer details screenshot showing an e-transfer was cancelled September 01, 2021 after not being accepted by the Landlord. The Tenant submitted text messages from September 01, 2021 in which the Landlord states that the Tenant has not paid rent for two-and-a-half months and that the eviction notice is still valid and therefore the Landlord will not accept the e-transfer.

The 10 Day Notice was submitted. The 10 Day Notice was issued for \$2,400.00 in rent owing December 01, 2021. The Landlord submitted a Direct Request Worksheet

showing the 10 Day Notice was issued for unpaid rent from September 01, 2021 to December 01, 2021.

P.T. testified that \$3,000.00 in rent was outstanding as of the date of the hearing for rent from September 01, 2021 to January of 2022. P.T. testified that the Tenant did not have authority under the *Manufactured Home Park Tenancy Act* (the “Act”) to withhold rent.

The Tenant testified that \$2,400.00 in rent is outstanding because they made a \$600.00 cash payment to the Landlord September 10, 2022. The Tenant did not point to any authority under the *Act* to withhold rent. The Tenant testified that they were not living at the site in December.

### Analysis

The One Month Notice was issued pursuant to section 40 of the *Act*. Pursuant to section 40(4) of the *Act*, the Tenant had 10 days from receipt of the One Month Notice to dispute it.

I accept the testimony of P.T. that the One Month Notice was posted to the door of the Tenant’s recreational vehicle July 12, 2021 and note that the photo in evidence supports this. I find the Tenant was served with the One Month Notice in accordance with section 81(g) of the *Act*. Given the Tenant cannot remember when they received the One Month Notice, the deeming provision in section 83(c) of the *Act* applies and the Tenant is deemed to have received the One Month Notice July 15, 2021.

I find the Tenant did not file a dispute of the One Month Notice with the RTB because the Tenant acknowledged this and there is no evidence before me showing the Tenant did file a dispute of the One Month Notice.

Section 40(5) of the *Act* states:

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the manufactured home site by that date.

Pursuant to section 40(5) of the *Act*, the Tenant is conclusively presumed to have accepted the One Month Notice and was required to vacate the site August 31, 2021, the corrected effective date of the One Month Notice.

The Tenant submitted that the tenancy was reinstated because the Landlord accepted rent after the effective date of the One Month Notice. The Tenant testified that they paid the Landlord \$600.00 in cash September 10, 2021. P.T. denied that the Landlord accepted \$600.00 from the Tenant in September.

I do not accept that the Tenant paid the Landlord \$600.00 in cash September 10, 2021. There is no documentary evidence before me showing the Tenant paid the Landlord \$600.00 in September. The Tenant submitted documentary evidence, the e-transfer details, showing the Landlord did not accept a payment on September 01, 2021. The Tenant submitted text messages showing the Landlord did not accept payment because their position was that the eviction notice was still valid. I find it unlikely that the Landlord did not accept rent September 01, 2021 but accepted it September 10, 2021. In the absence of further evidence showing the Tenant paid the Landlord \$600.00 September 10, 2021, I do not accept that the Tenant did.

Given the above, I do not accept that the tenancy was reinstated because I do not accept that the Landlord accepted rent after the effective date of the One Month Notice.

I have reviewed the One Month Notice and find it complies with section 45 of the *Act* as required by section 40(3) of the *Act*.

In the circumstances, the Landlord is entitled to an Order of Possession pursuant to section 48(2)(b) of the *Act*. The Landlord is issued an Order of Possession effective two days after service on the Tenant.

Given the Landlord has been issued an Order of Possession based on the One Month Notice, it is not necessary to consider the validity of the 10 Day Notice.

In relation to unpaid rent, as explained above, I accept that the Landlord has not accepted rent since August of 2021. I do not find that the Landlord gave up their right to collect unpaid rent by not accepting rent payments after the effective date of the One Month Notice because the Landlord did so to avoid reinstating the tenancy. The Tenant

testified that they have not lived in their recreational vehicle on the site since November of 2021. As explained to the Tenant during the hearing, the Tenant is renting a site from the Landlord and their recreational vehicle was on the site in September and continued to be on the site as of the hearing date. Although the tenancy ended August 31, 2021 pursuant to the One Month Notice, the Tenant was still required to pay the rent amount while their recreational vehicle remained on the site pursuant to section 50 of the *Act* which states:

50 (1) In this section...

"overholding tenant" means a tenant who continues to occupy a manufactured home site after the tenant's tenancy is ended.

(2) The landlord must not take actual possession of a manufactured home site that is occupied by an overholding tenant unless the landlord has a writ of possession issued under the Supreme Court Civil Rules.

**(3) A landlord may claim compensation from an overholding tenant for any period that the overholding tenant occupies the manufactured home site after the tenancy is ended.** (emphasis added)

The Tenant was required to pay the Landlord \$600.00 per month while their recreational vehicle remained on the site because the Tenant remained in possession of the site while their recreational vehicle was on it. Given this, the Tenant owes the Landlord \$600.00 per month from September of 2021 to January of 2022 for a total of \$3,000.00. The Tenant did not point to any authority under the *Act* to withhold rent. The Landlord is entitled to recover the unpaid rent.

Given the Landlord was successful, they are entitled to recover the \$100.00 filing fee pursuant to section 65 of the *Act*. I do not award the Landlord both filing fees because there was no reason to file two separate Applications for Dispute Resolution. The Landlord should have amended their first Application for Dispute Resolution to include the issues raised in the second Application for Dispute Resolution which would not have required a fee.

Given the above, the Landlord is entitled to \$3,100.00 and is issued a Monetary Order in this amount pursuant to section 60 of the *Act*.

Conclusion

The Landlord is issued an Order of Possession effective two days after service on the Tenant. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

The Landlord is issued a Monetary Order for \$3,100.00. This Order must be served on the Tenant and, if the Tenant does not comply with the Order, it may be filed in the Provincial Court (Small Claims) 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 *Act*.

Dated: January 26, 2022

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Residential Tenancy Branch