



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPR, FFL

### Introduction

Pursuant to section 51 of the Manufactured Home Park Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The landlord applied for:

- an order of possession under a 10-Day Notice to End Tenancy for Unpaid Rent (the Notice), pursuant to sections 39 and 48; and
- an authorization to recover the filing fee for this application, under section 65.

I left the teleconference connection open until 11:52 A.M. to enable respondent LT (the respondent) to call into this teleconference hearing scheduled for 11:00 A.M. The respondent did not attend the hearing. Landlords RH (the landlord) and JH attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Witness TW also attended. 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 the landlords, their witness and I were the only ones who had called into this teleconference.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 87(4) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

The landlord affirmed that he served the notice of hearing and the evidence (the materials) by registered mail to the respondent on December 03, 2021. The tracking number and the respondent's address are recorded on the cover page of this decision.

The landlord submitted into evidence a Manufactured Home Search Result (the search) stating that the respondent is the owner of the manufactured home occupying the tenancy address: "LT, administrator of the estate of BT, deceased".

The landlord affirmed the tenant died and the respondent is the current owner of the manufactured home occupying the tenancy site, but the respondent does not live in the manufactured home. TB is the occupant of the manufactured home and the landlord did not authorize TB to occupy the manufactured home site.

Section 1 of the Act states: "tenant includes the estate of a deceased tenant".

Based on the landlord's convincing testimony and the search, I find the respondent is a tenant, per section 1 of the Act.

Section 82(2)(b) of the Act states the applicant must serve the application by sending a copy by registered mail to the address at which the tenant resides.

Based on the landlord's convincing testimony, the tracking number provided and the search, I find the landlord served the materials in accordance with section 82(2)(b) of the Act.

### Issues to be Decided

Is the landlord entitled to:

1. an order of possession based on the Notice?
2. an authorization to recover the filing fee?

### Background and Evidence

While I have turned my mind to the evidence and the testimony of the attending party, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below. I explained rule 7.4 to the attending party; it is the landlord's obligation to present the evidence to substantiate the application.

The landlord affirmed monthly rent was \$681.66 until December 31, 2021 and \$691.88 from January 01, 2022. Monthly rent is due on the first day of the month.

The landlord stated he served the Notice by registered mail on October 25, 2021. The tracking number is recorded on the cover page of this decision.

The landlord submitted a copy of the October 25, 2021 Notice into evidence. It indicates the respondent did not pay rent in the total amount of \$1,363.22 due on September 01 and October 01, 2021. The effective date is November 10, 2021. The Notice is signed and dated by the landlord, it gives the address of the manufactured home site, and it is in the approved form.

The landlord testified he is not aware of an application brought by the respondent. The manufactured home is currently occupied.

The landlord confirmed receipt of rent due on September 01, 2021 on October 22, 2021 and rent due on October 01, 2021 on October 26, 2021. The landlord said that when he issued the Notice he was not aware of the payments.

### Analysis

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure states that 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.

Based on the landlord's undisputed testimony and the tracking number, I find the landlord served the Notice in accordance with section 81(c) of the Act. The respondent is deemed to have received the Notice on October 30, 2021, per section 83(a) of the Act.

Section 39(4) of the Act states:

- 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.

Based on the landlord's undisputed testimony, I find the respondent, or someone acting on her behalf, paid rent in full before October 30, 2021, the date the respondent is deemed to have received the Notice.

Thus, per section 39(4)(a) of the Act, the Notice is cancelled.

As the landlord was not successful in this application, the landlord must bear the cost of the filing fee.

### Conclusion

The Notice dated October 25, 2021 is cancelled and of no force or effect. The tenancy continues 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: March 10, 2022

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Residential Tenancy Branch