



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FFT, CNC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 17, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause (the “Notice”)
- To recover the filing fee

The Landlord appeared at the hearing with L.A.M. Nobody appeared at the hearing for the Tenant. The hearing proceeded for 23 minutes. I explained the hearing process to the Landlord. I told the Landlord they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The Landlord provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Landlord confirmed receipt of the hearing package. The Landlord testified that they did not receive evidence from the Tenant. The Landlord testified that they served their evidence on the Tenant March 31, 2022, by mail to the site.

I accept the undisputed testimony of the Landlord that they did not receive the Tenant’s evidence. I find the Tenant failed to comply with rule 3.14 of the Rules. I exclude the Tenant’s evidence pursuant to rule 3.17 of the Rules as I find it would be unfair to consider it when the Landlord has not seen it.

I accept the undisputed testimony of the Landlord about service and find the Tenant was served with the Landlord’s evidence in accordance with section 81(c) of the *Manufactured Home Park Tenancy Act* (the “Act”). Pursuant to section 83(a) of the *Act*,

the Tenant is deemed to have received the evidence April 05, 2022. I find the Landlord complied with rule 3.15 of the Rules in relation to the timing of service of the evidence.

The Landlord was given an opportunity to present relevant evidence and make relevant submissions. I have considered all testimony provided and reviewed the admissible documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession based on the Notice?
3. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

A written tenancy agreement was submitted in evidence. A different landlord is named on the tenancy agreement. The Landlord testified that they purchased the park in September of 2020 and became the landlord. The tenancy started October 01, 2016, and is a month-to-month tenancy. Rent is due on the first day of each month.

The Notice was submitted in evidence. The Notice is addressed to the Tenant and relates to the site. The Notice is signed and dated by the Landlord. The Notice has an effective date of February 28, 2022. The grounds for the Notice are:

1. Tenant is repeatedly late paying rent.

The “Details of Cause” section of the Notice outlines the late payment dates as follows:

- October 2020
- January 2021
- February 2021
- March 2021
- May 2021
- June 2021

- July 2021
- August 2021
- September 2021
- November 2021
- December 2021
- January 2022

The Landlord submitted a screen shot of their email showing when they received e-transfers from the Tenant for rent. The screen shot supports that the above listed payments were late.

The Landlord testified that the Notice was posted to the door of the Tenant's home on January 08, 2022.

The Landlord confirmed the Tenant is repeatedly late paying rent which is why the Notice was issued. The Landlord disputed the statements made by the Tenant in the Application in relation to the Notice and rent payments.

The Landlord sought an Order of Possession effective April 30, 2022.

### Analysis

Rule 7.3 of the Rules states:

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

I dismiss the Application without leave to re-apply because the Tenant did not appear at the hearing to provide a basis for the Application.

The Notice was issued pursuant to section 40 of the *Act* and the following subsection:

40 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(a) the tenant is repeatedly late paying the rent...

The Tenant had 10 days from receipt of the Notice to dispute it pursuant to section 40(4) of the *Act*.

I accept the undisputed testimony of the Landlord that the Notice was posted to the door of the Tenant's home on January 08, 2022. I find the Notice was served in accordance with section 81(g) of the *Act*. Pursuant to section 83(c) of the *Act*, the Tenant is deemed to have received the Notice January 11, 2022.

The Tenant filed the Application January 17, 2022, within time. However, the Tenant failed to appear at the hearing and provide a basis for the Application and the Application has been dismissed without leave to re-apply.

The Landlord is still required to prove the grounds for the Notice pursuant to rule 6.6 of the Rules.

I accept the undisputed testimony of the Landlord and the screenshot showing late payments of rent and accept that the Tenant paid rent late in the following months:

- October 2020
- January 2021
- February 2021
- March 2021
- May 2021
- June 2021
- July 2021
- August 2021
- September 2021
- November 2021
- December 2021
- January 2022

RTB Policy Guideline 38 deals with repeated late payments of rent and states:

The Residential Tenancy Act and the Manufactured Home Park Tenancy Act both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.

Based on the undisputed testimony of the Landlord and the screenshot showing late payments of rent, I find the following. When the Notice was issued, the Tenant had paid rent late 10 times in 2021 and once in 2022. Paying rent late 11 times in one year and one month is excessive, much more than three times and is repeated late payment of rent. The late rent payments are not far apart. The Landlord did not fail to act in a timely manner after the last late payment and issued the Notice that month.

I note that the Tenant provided a statement in the Application about repeated late payment of rent; however, the Tenant did not appear at the hearing to provide affirmed testimony and therefore I do not find the written statement sufficiently compelling to overcome the affirmed testimony of the Landlord which is also supported by documentary evidence.

I find the Landlord had grounds to issue the Notice.

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

Section 48(1) of the *Act* states:

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.

The Landlord is entitled to an Order of Possession pursuant to section 48(1) of the *Act* and I issue the Landlord an Order of Possession effective at 1:00 p.m. on April 30, 2022.

### Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on April 30, 2022. The Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme Court 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: April 14, 2022

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Residential Tenancy Branch