



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SHELTER BAY RESORT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, OLC, MNDCT, RR, OPU-DR, MNR-DR

### Introduction

This hearing dealt with cross applications filed by the parties. On March 24, 2022, the Tenants applied for a Dispute Resolution proceeding seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “Notice”) pursuant to Section 39 of the *Manufactured Home Park Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 55 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 60 of the *Act*, and seeking a rent reduction pursuant to Section 58 of the *Act*.

On March 29, 2022, the Landlord applied for a Dispute Resolution proceeding seeking an Order of Possession based on the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities pursuant to Section 39 of the *Act* and seeking a Monetary Order for compensation pursuant to Section 60 of the *Act*.

Both Tenants attended the hearing, with H.B. attending as their advocate. R.C. and L.P. attended the hearing as agents for the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

Tenant T.B. advised that she served the Notice of Hearing and evidence package by hand to L.P. on March 29, 2022, and R.C. confirmed that this was received. Based on this undisputed testimony, and in accordance with Sections 82 and 83 of the *Act*, I am satisfied that the Landlord has been served with the Notice of Hearing and evidence package. As such, I have accepted the Tenants' evidence and will consider it when rendering this Decision.

R.C. advised that each Tenant was served with a separate Notice of Hearing and evidence package by posting it to the Tenants' mailbox and by putting it on their door on April 6, 2022. T.B. confirmed that they received these packages. Based on this undisputed testimony, and in accordance with Sections 82 and 83 of the *Act*, I am satisfied that the Tenants have been served with the Notice of Hearing and evidence packages. As such, I have accepted the Landlord's evidence and will consider it when rendering this Decision.

As per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Notice, and the other claims were dismissed with leave to reapply. The Tenants are at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 48 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Are the Tenants entitled to have the Landlord's Notice cancelled?
- If the Tenants are unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The parties did not know when the tenancy specifically started, other than it was sometime in 2017. However, they both agreed that rent was currently established at \$560.00 per month and that it was due on the first day of each month. A written copy of a tenancy agreement was not submitted as documentary evidence as the Landlord did not create one, as required by the *Act*.

R.C. advised that the Notice was served to the Tenants by posting it on their door and placing it in their mailbox on March 22, 2022. He submitted that the Notice was served because \$240.00 was in arrears for rent and was due on March 1, 2022. He indicated that \$140.01 was also due for utilities; however, this was not considered as he purportedly issued a written demand for those utilities on the same day the Notice was served. He was given multiple opportunities to explain how he came up with this amount of rental arrears, and he repeatedly had to confer with L.P. in order to attempt to explain this amount. It was evident that they had little, documented accounting of the payments for rent made by the Tenants, and they were confused by additional charges owing for items like storage, parking, and utilities. He claimed that the Tenants had been receiving assistance payments from the government, but his testimony on the amounts and dates of these payments was unsure and inconsistent. After much deliberation, from what I could decipher from his testimony, I had to calculate the actual amount of rent owing as \$160.00 on March 1, 2022, and this was then confirmed by him.

Despite no effective end date of the tenancy being written on the Notice that was submitted as documentary evidence, T.B. confirmed that a date of April 1, 2022 was written on their copy of the Notice. She advised that they paid the Landlord \$700.00 (of which \$560.00 was for rent) on February 22, 2022, by electronic transfer and she cited the receipt submitted as documentary evidence. She then stated that the ministry paid the Landlord \$800.00 on March 1, 2022, for March and April 2022 rent. She referenced the documentary evidence submitted to support this testimony. She stated that they paid the difference in rent that the ministry cheque did not cover.

R.C. acknowledged receiving \$400.00 for each of February and March 2022 rent from the ministry.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 20 of the *Act* states that rent must be paid by the Tenants when due according to the tenancy agreement, whether or not the Landlord complies with the tenancy agreement or the *Act*, unless the Tenants have a right to deduct all or a portion of the rent.

Section 45 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord, give the address of the rental unit, state the effective date of the Notice, state the grounds for ending the tenancy, and be in the approved form.

Should the Tenants not pay the rent when it is due, Section 39 of the *Act* allows the Landlord to serve a 10 Day Notice to End Tenancy for Unpaid rent. The undisputed evidence before me is that the Tenants received the Notice on March 22, 2022. According to Section 39(4) of the *Act*, the Tenants had 5 days to pay the overdue rent or to dispute this Notice. Section 39(5) of the *Act* states that *"If a tenant who has received a notice under this section does not pay the rent or make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit to which the notice relates by that date."*

As the Tenants received the Notice on March 22, 2022, they must have paid the rent in full on March 27, 2022, or disputed the Notice by Monday March 28, 2022, at the latest. I find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim.

In the case before me, I note that R.C. was disorganized and had very few details pertinent to the accurate accounting of funds for this tenancy. This is evident in the fact that the amount of rent noted in arrears on the Notice was incorrect. Given that R.C. provided uncertain, inconsistent testimony on how much rent was in arrears, and that he did not submit any documentary evidence to support the actual amount of rental arrears

outstanding, I do not find his accounting, testimony, management, or submissions to be reliable or accurate. While the Tenants may be in arrears some rent, as R.C. could not adequately prove how much was in arrears, if any, when the Notice was served, I am not satisfied that the Notice was valid. As such, I find that the Notice of March 22, 2022, is cancelled and of no force and effect.

### Conclusion

Based on the above, I hereby Order that the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities of March 22, 2022 to be cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Landlord's Application is dismissed without leave to reapply.

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: June 14, 2022

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Residential Tenancy Branch