



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1291526 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPR-DR, MNR-DR, FFL

### Introduction

This hearing dealt with the landlord's application, filed on September 7, 2022, pursuant to the *Manufactured Home Park Tenancy Act* ("Act") for:

- an Order of Possession for unpaid rent, pursuant to section 48;
- a monetary order for unpaid rent, pursuant to section 60; and
- authorization to recover the filing fee for this application, pursuant to section 65.

The tenant did not attend this hearing, which lasted approximately 45 minutes. The landlord's two agents, "landlord HP" and "landlord DP," attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing began at 9:30 a.m. and ended at 10:15 a.m. I monitored the teleconference line throughout this hearing. 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 landlord's two agents and I were the only people who called into this teleconference.

At the outset of this hearing, I asked the landlord's agents to remove their telephone from speakerphone because I could not hear properly, and it could affect my decision if I missed important information. The landlord's agents could both hear, and both spoke at the same time, throughout this hearing. They also handed the phone to each other, during this hearing. Landlord HP stated that he wanted landlord DP to be the primary speaker for the landlord at this hearing, since she dealt with all the paperwork.

The landlord's two agents provided their names and spelling. Landlord HP stated that he was the caretaker and landlord DP said that she did the paperwork and was the

agent for the landlord company (“landlord”) named in this application. Landlord DP said that the landlord owns the rental unit. They both confirmed that they had permission to represent the landlord at this hearing. Landlord DP provided the legal name of the landlord. Landlord HP provided the rental unit address. Landlord HP provided his email address for me to send this decision to the landlord after the hearing.

Rule 6.11 of the Residential Tenancy Branch (“RTB”) *Rules of Procedure* (“Rules”) does not permit recordings of any RTB hearings by any participants. At the outset of this hearing, the landlord’s two agents both separately affirmed, under oath, that they would not record this hearing.

I explained the hearing process to the landlord’s agents. They had an opportunity to ask questions. They did not make any adjournment or accommodation requests. They confirmed that they were prepared to proceed with this hearing.

At the outset of this hearing, landlord DP confirmed that this application was filed under the *Act*, since the tenant owned her manufactured home (“home”) and rented a manufactured home site (“site”) located in the manufactured home park (“park”) from the landlord. She claimed that the landlord owns the site and the park.

#### Preliminary Issue – Direct Request Proceeding and Service

This hearing was originally scheduled as a direct request proceeding, which is a non-participatory hearing. A decision is made on the basis of the landlord’s paper application only, not any participation by the tenant. An “interim decision,” dated November 2, 2022, was issued by an Adjudicator for the direct request proceeding. The interim decision adjourned the direct request proceeding to this participatory hearing. During this hearing, landlord DP confirmed that the above information was correct.

The interim decision states the following at pages 3 and 4 (emphasis in original):

*I have reviewed all documentary evidence and I find that the tenant’s address on the tenancy agreement submitted by the landlord is incomplete as it does not list the city in which the rental unit is located.*

*I also find that the landlord’s name on the tenancy agreement (Person L.B.) does not match the numbered company landlord named on the Application for Dispute*

*Resolution. Furthermore, I find the landlord named on the 10 Day Notice (Person K.P.) does not match either the landlord named on the agreement, or the landlord named on the Application.*

*Finally, the landlord must prove that they served the tenant with the 10 Day Notice in a manner that is considered necessary as per sections 64(2)(a) and 81 of the Act. Residential Tenancy Policy Guideline #39 provides the key elements that need to be considered when making an application for Direct Request.*

*Proof of service of the 10 Day Notice to End Tenancy may take the form of:*

- registered mail receipt and printed tracking report;*
- **a receipt signed by the tenant, stating they took hand delivery of the document(s); or***
- **a witness statement that they saw the landlord deliver the document(s).***

*On the second page of the Proof of Service Notice to End Tenancy there is no signature of a witness, or of the person who received the 10 Day Notice, to confirm service of the 10 Day Notice to the tenant. I find that Person H.P. has signed as the witness and as the person who has served the 10 Day Notice.*

*I find these discrepancies raise questions that can only be addressed in a participatory hearing.*

By way of the interim decision, the landlord was required to serve the interim decision and notice of reconvened hearing to the tenant. Landlord DP stated that the tenant was served with the above documents on November 4, 2022, by way of registered mail to the tenant's home at the site in the park. Landlord DP provided a Canada Post tracking number verbally during this hearing. She said that the landlord did not provide a Canada Post tracking report and she did not know if the package was delivered or received by the tenant. In accordance with sections 82 and 83 of the Act, I find that the tenant was deemed served with the interim decision and notice of reconvened hearing on November 9, 2022, five days after its registered mailing.

Landlord DP testified that the tenant was served with the landlord's original direct request application for dispute resolution hearing package on September 29, 2022. The landlord provided a Canada Post receipt and confirmed the tracking number verbally during this hearing. In accordance with sections 82 and 83 of the Act, I find that the

tenant was deemed served with the landlord's original direct request application on October 4, 2022, five days after its registered mailing.

Landlord DP stated that the tenant was served with the landlord's new evidence package on November 10, 2022, by way of registered mail. She said that the landlord did not provide a Canada Post tracking report and she did not know if the package was delivered or received by the tenant. In accordance with sections 81 and 83 of the *Act*, I find that the tenant was deemed served with the landlord's new evidence package on November 15, 2022, five days after its registered mailing.

I informed the landlord's agents that I could not consider the landlord's new evidence package at this hearing or in my decision because it was deemed received late by the tenant, on November 15, 2022, less than 14 days prior to this hearing on November 28, 2022, contrary to Rule 3.14 of the *RTB Rules*. Landlord DP confirmed her understanding of same. She stated that she still wanted to proceed with this hearing in the absence of the above evidence.

Landlord HP testified that he personally served the landlord's 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated September 1, 2022 ("10 Day Notice"), to an adult who is the tenant's boyfriend, who he assumes lives at the rental home. He said that he did not obtain the name or age of the tenant's boyfriend because he refused to provide it. Landlord DP stated that landlord HP "redid" the written proof of service that was incorrect and submitted with the landlord's original direct request application.

#### Preliminary Issue – Inappropriate Behaviour by Landlord's Two Agents during this Hearing

Rule 6.10 of the *RTB Rules* states the following:

*6.10 Interruptions and inappropriate behaviour at the dispute resolution hearing*  
*Disrupting the hearing will not be permitted. The arbitrator may give directions to any person in attendance at a hearing who is rude or hostile or acts inappropriately. A person who does not comply with the arbitrator's direction may be excluded from the dispute resolution hearing and the arbitrator may proceed in the absence of that excluded party.*

Throughout this hearing, I informed both landlord agents that they repeatedly interrupted me, spoke at the same time as me, argued with me, laughed at me, and made rude and disparaging comments towards me.

I repeatedly cautioned the landlord's agents that I could not hear what they were saying, and they could not hear me, when they kept interrupting me and speaking at the same time as me. I repeatedly asked them to allow me to speak, so that I could answer their questions and make statements regarding this application.

I repeatedly cautioned the landlord's agents, but they continued with their inappropriate behaviour. This hearing lasted longer because of the repeated interruptions, arguments, and inappropriate behaviour by the landlord's agents.

During this hearing, while I was asking questions regarding service of the 10 Day Notice, landlord HP got upset, interrupted me, and stated: "you're rambling on."

At 10:14 a.m., while I was speaking, landlord HP stated: "you're a fucking whack job, fuck you." The landlord's agents then disconnected from the hearing, without warning. I repeatedly checked the hearing line to ask if anyone was present, but the landlord's agents did not respond and did not call back into this hearing. At 10:15 a.m., I ended the hearing, as no one else was on the telephone line or participating in this hearing.

#### Issues to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent?

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to recover the filing fee for this application?

#### Background and Evidence

Landlord DP testified regarding the following facts. This tenancy began on August 1, 2019. Monthly rent in the current amount of \$355.00 is payable on the first day of each month. The landlord purchased the site in the park from the former landlord, around spring 2021. The landlord did not provide ownership or purchase documents. No security deposit was paid by the tenant to the landlord. A written tenancy agreement was signed between the former landlord and the tenant. It is unknown why there is no city listed in the tenancy agreement. The name of individual "landlord KP" in the 10 Day Notice is the owner of the landlord. The tenant continues to reside at her home in the site at the park.

Landlord DP stated the following facts. The landlord issued the 10 Day Notice, which has an effective move-out date of September 10, 2022, indicating that rent in the amount of \$363.00 was due, for a total of \$1,089.00, for three months of rent. Landlord DP assumed that the tenant's rent was the same as landlord DP's rent, at \$363.00 per month, but this was incorrect, since the tenancy agreement states that the rent was \$355.00 per month for the tenant's tenancy. The landlord seeks an order of possession based on the 10 Day Notice.

Landlord DP testified regarding the following facts. The tenant failed to pay rent of \$355.00 per month, for four months, from August to November 2022, inclusive, totalling \$1,420.00. The landlord seeks a monetary order for unpaid rent. The tenant also failed to pay late fees. The tenant paid rent of \$391.00 for each month for March and July 2022, on September 12, 2022 and September 21, 2022, respectively. Landlord HP does not know why the tenant paid \$391.00 for the above rent, since the rent was set before the landlord purchased the rental unit.

### Analysis

#### Burden of Proof

The landlord, as the applicant, has the burden of proof, on a balance of probabilities, to present this application, claims, and evidence. The *Act, Regulation, RTB Rules*, and Residential Tenancy Policy Guidelines require the landlord to provide evidence of its claims and prove its application, in order to obtain an order of possession and a monetary order.

The landlord received an application package from the RTB, including instructions regarding the hearing process. Landlord DP testified that the landlord served this application package to the tenant, as required, and as noted above. The landlord received a document entitled "Notice of Dispute Resolution Proceeding," dated November 3, 2022 ("NODRP"), from the RTB. This document contains the phone number and access code to call into this hearing.

The NODRP states the following at the top of page 2, in part (emphasis in original):

*The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent.*

- *It is important to have evidence to support your position with regards to the claim(s) listed on this application. For more information see the*

*Residential Tenancy Branch website on submitting evidence at [www.gov.bc.ca/landlordtenant/submit](http://www.gov.bc.ca/landlordtenant/submit).*

- *Residential Tenancy Branch Rules of Procedure apply to the dispute resolution proceeding. View the Rules of Procedure at [www.gov.bc.ca/landlordtenant/rules](http://www.gov.bc.ca/landlordtenant/rules).*
- *Parties (or agents) must participate in the hearing at the date and time assigned.*
- *The hearing will continue even if one participant or a representative does not attend.*
- *A final and binding decision will be sent to each party no later than 30 days after the hearing has concluded.*

The NODRP states that a legal, binding decision will be made in 30 days and links to the RTB website and the *Rules* are provided in the same document.

The landlord received a detailed application package from the RTB, including the NODRP, with information about the hearing process, notice to provide evidence to support this application, and links to the RTB website. It is up to the landlord to be aware of the *Act*, *Regulation*, *RTB Rules*, and Residential Tenancy Policy Guidelines. It is up to the landlord, as the applicant, to provide sufficient evidence of the claims, since it chose to file this application on its own accord.

Rule 6.6 of the RTB *Rules* states the following (my emphasis added):

#### ***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.***

The following RTB *Rules* are applicable and state the following, in part:

#### ***7.4 Evidence must be presented***

*Evidence must be presented by the party who submitted it, or by the party's agent...*

...

*7.17 Presentation of evidence*

*Each party will be given an opportunity to present evidence related to the claim. The arbitrator has the authority to determine the relevance, necessity and appropriateness of evidence...*

*7.18 Order of presentation*

*The applicant will present their case and evidence first unless the arbitrator decides otherwise, or when the respondent bears the onus of proof...*

I find that the landlord's two agents did not properly present the landlord's claims and evidence, as required by Rule 7.4 of the RTB *Rules*, despite having the opportunity to do so during this hearing, as per Rules 7.17 and 7.18 of the RTB *Rules*.

This hearing lasted 45 minutes and only the landlord's agents attended the hearing, as the tenant did not attend. During this hearing, I provided the landlord's agents with ample and additional time to search through their evidence, and provide clear testimony and evidence, but they failed to do so.

I found the testimony of the landlord's agents to be very confusing, contradictory to the information in the landlord's application, and inconsistent since it frequently changed throughout this hearing. I find that the landlord failed to comply with section 59(2)(b) of the *Act* and Rule 6.6 of the RTB *Rules*, as noted above.

*Particulars of Landlord's Application*

The landlord filed this application to obtain an order of possession for unpaid rent, against the tenant, based on the 10 Day Notice.

Pursuant to section 52(2)(b) of the *Act*, an application must include the full particulars of the dispute that is to be the subject of the dispute resolution proceedings. The purpose of the provision is to provide a tenant with notice and enough information to know the landlord's case so that the tenant can properly respond.

Pursuant to section 52(5)(a) of the *Act*, I can refuse to accept an application if it does not disclose a dispute that may be determined. The landlord is the applicant, and has the burden of proof, on a balance of probabilities, to provide sufficient particulars of this



application, including any monetary amounts, to provide sufficient evidence of this application, and to prove this application at this hearing.

10 Day Notice, Unpaid Rent, and Filing Fee

I further find that the landlord failed to establish ownership of the site in the park, as the name of the landlord on the 10 Day Notice, the tenancy agreement, and this application are all different individuals and companies. The landlord was cautioned regarding this issue in the interim decision, dated November 2, 2022, but failed to provide sufficient evidence of same for this hearing, despite ample time to do so, prior to this hearing.

Section 20 of the *Act* requires the tenant to pay rent on the date indicated in the tenancy agreement, which landlord DP said was the first day of each month. Section 39 of the *Act* states that the landlord may only issue a 10 Day Notice for any day after the rent is due.

I find that the landlord failed to properly serve the 10 Day Notice to the tenant, as the landlord failed to establish the name, age, or identity of the tenant's boyfriend being served and whether he is an adult apparently residing with the tenant, contrary to section 81(e) of the *Act*. The landlord was cautioned regarding proof of service of the 10 Day Notice in the interim decision, dated November 2, 2022, but failed to provide sufficient evidence of same for this hearing, despite ample time to do so, prior to this hearing.

Landlord DP agreed that the rent amount of \$363.00 per month, and \$1,089.00 total for four months, was incorrect on the 10 Day Notice. Landlord DP stated that the rent was \$355.00 per month for the tenant's tenancy, as per the tenancy agreement. Landlord DP also said that the tenant paid rent of \$391.00 per month for March and July 2022, but she did not know why, since this rent amount was set prior to the landlord's purchase of the site in the park.

I find that the tenant did not have notice of the proper amount of rent due. The 10 Day Notice provided the incorrect amount of \$363.00 per month, and \$1,089.00 total, with three different due dates of March 1, 2022, July 1, 2022, and August 1, 2022. I find that the tenant did not have an opportunity to pay the rent in order to cancel the notice because the rent information supplied by the landlord was incorrect.

Accordingly, I find that the landlord is not entitled to an order of possession based on the 10 Day Notice, and I dismiss this application without leave to reapply. The

landlord's 10 Day Notice, dated September 1, 2022, is cancelled and of no force or effect.

The landlord failed to establish the proper amount of rent due and provided three different rent amounts of \$355.00, \$363.00, and \$391.00 per month. The landlord's agents providing confusing and inconsistent testimony during this hearing, regarding the rent owing as per the tenancy agreement, the 10 Day Notice, and the amounts paid by the tenant, which were all different amounts, as noted above. Accordingly, I dismiss the landlord's application for a monetary order for unpaid rent, with leave to reapply.

As the landlord was unsuccessful in this application, I find that it is not entitled to recover the \$100.00 filing fee from the tenant.

### Conclusion

The landlord's application for a monetary order for unpaid rent is dismissed with leave to reapply.

The remainder of the landlord's application is dismissed without leave to reapply.

The landlord's 10 Day Notice, dated September 1, 2022, is cancelled and of no force or effect.

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: November 28, 2022

---

Residential Tenancy Branch