



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

## DECISION

**Dispute Codes**      OPC, FFL

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the "**Act**") for:

- an order of possession for cause pursuant to section 48; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 65.

Both parties attended the hearing. The tenant was represented by his sister ("**RP**"). The landlord was assisted by his son and the park manager. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The landlord testified, and RP confirmed, that the landlord served the tenant with the notice of dispute resolution package and supporting documentary evidence. RP stated that the tenant did not submit any documentary evidence to the Residential Tenancy Branch (the "**RTB**") or the landlord.

### **Issues to be Decided**

Is the landlord entitled to:

- 1) an order of possession; and
- 2) recover the filing fee;

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a tenancy agreement at some point in 2012. Monthly rent is currently \$705.75 and is payable on the first of each month.

On April 24, 2022, the landlord served the tenant with the Notice by posting it on the door of the manufactured home. It specified the reason for ending the tenancy as "tenant is repeatedly late paying rent". It listed an effective date of June 1, 2022.

The tenant did not dispute the Notice, nor did he vacate the manufactured home site on the effective date of the Notice.

The landlord made this application on October 3, 2022.

The landlord submitted a “tenants record of payment” which the landlord testified was kept contemporaneously during the tenancy and logged the date and amount of rent payment from January 2020 to October 2022 (the “**Ledger**”).

The parties agree that the tenant paid monthly rent by attending the landlord’s credit union and making a deposit into the landlord’s account. The credit union would issue the tenant a receipt for the deposit. The landlord would not issue a separate receipt.

The Ledger records the tenant as late paying rent seven times in 2020 and nine times in 2021.

The tenant disputes that these late payments are accurate. RP testified that the tenant would regularly pay his monthly rent early (as soon as he got his paycheck). She suggested that the landlord had neglected to record one or more of the tenant’s payments, which caused any subsequent payment made to look late. She stated that on several occasions the park manager asked the tenant for rent, and the tenant told him that he had already paid it a week prior.

The landlord took umbrage with the allegation that he did not accurately record the tenant’s rent payments. He stated that the Ledger accurately captures all payments made by the tenant.

RP stated that she was unable to obtain a copy of the landlord’s account records which would substantiate her testimony. She stated that it would not be reasonable to expect the tenant to maintain a paper deposit slip for each bank deposit he made over the course of many years.

The landlord did not submit any account records to corroborate the amounts listed in the Ledger.

The parties agree that the tenant did not pay January, February, or March 2022 rent when it was due. The tenant testified that he lost his job in January and that he was not able to make rent payments for these three months until March 2, 2022. Additionally, the parties agree that the tenant did not pay April 2022 rent until April 27, 2022.

Since then, the tenant has paid all of his rent on time or early.

The tenant testified that he did not dispute the Notice because he had a conversation with the landlord and understood that if he continued to pay rent on time, the landlord would allow the tenancy to continue. The landlord denied having such a conversation or

advising the tenant that he would withdraw the Notice. He testified that a member of the Ministry of Social Development and Poverty Reduction contacted him to ask as to the status of the tenancy, and he advised them that he intended to proceed with the eviction. He did not provide any corroboration of this.

The landlord stated that he did not apply for an order of possession immediately after issuing the Notice because other, more pressing, matters consumed the attention of him and his staff at the manufactured home park. He testified that he made the application from order of possession as soon as he was able. He stated that no time did he tell the tenant that the Notice would be cancelled or that the tenancy would be reinstated.

RK argued that by continuing to accept rent after the effective date of the Notice, the landlord reinstated the tenancy.

### **Analysis**

Based on the evidence presented at the hearing, I find that the tenant was served with the Notice on April 24, 2022, and that he did not dispute it.

RTB Policy Guideline 38 addresses repeated late payments of rent. It states:

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.

As such, it is not necessary for me to determine whether the tenant was repeatedly late paying rent in 2020 or 2021. The parties agree that the tenant was late paying rent for January, February, March, and April 2022. These late payments are sufficient for the tenant to be considered to have repeatedly paid rent late.

This does not necessarily mean, however, that the Notice is valid.

RTB Policy Guideline 11 addresses waivers of notices to end tenancies. It states:

Implied waiver happens when a landlord and tenant agree to continue a tenancy, but without a clear and unequivocal expression of intent. Instead, the waiver is implied through the actions or behaviour of the landlord or tenant.

For example, if a landlord gives a notice to end tenancy, a landlord may accept rent from the tenant for the period up to the effective date of the notice to end tenancy without waiving the notice. However, if the landlord continues accepting rent for the period after the effective date but fails to issue rent receipts indicating the rent is for “use and occupancy only,” it could be implied that the landlord and tenant intend for the tenancy to continue.

Intent may also be established by evidence as to:

- whether the landlord specifically informed the tenant that the money would be for use and occupancy only;
- whether the landlord has withdrawn their application for dispute resolution to enforce the notice to end tenancy or has cancelled the dispute resolution hearing; and
- the conduct of the parties

The tenant paid rent on time to early every month after the effective date of the Notice. The landlord did not once indicate that these payments were amount was accepted for “use an occupancy only”, either by indicating as such on the receipt (which may have been difficult given the manner in which the tenant paid monthly rent) or by text message, e-mail, or other another written form to the tenant. Given that the Ledger was kept contemporaneously, I find it more likely than not that the landlord was aware that the tenant was continuing to make monthly rent payments on time or early, so I cannot attribute this failure to ignorance that the tenant was paying his rent.

I do not find that the landlord acted in a timely manner when seeking to enforce the Notice. Over five months elapsed between when the Notice was served and when the landlord applied for an order of possession. It is a relatively simple process to make an application to the Residential Tenancy Branch for an order of possession. It can be done online in less than 30 minutes. There is nothing in evidence which would indicate that the landlord was so busy in the months following the Notice being issued so as to be unable to spare 30 minutes to make such an application.

In light of the lack of indication from the landlord that rent was accepted for “use and occupancy only”, the failure of the landlord to diligently pursue an order of possession, and the tenant having paid rent on time every month since May 2022, I find that the tenancy has been reinstated.

The Notice is therefore of no force or effect and I order that it is cancelled.

As the landlord has been unsuccessful in his application for an order of possession, I decline to order that the tenant reimburse him the filing fee.

## **Conclusion**

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

The tenancy shall continue.

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: February 13, 2023

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Residential Tenancy Branch