



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Paul Eng  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNR, CNC, PSF, FFT**

### **Introduction**

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (“10 Day Notice”) pursuant to section 39;
- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 40;
- An order requiring the landlord to provide services or facilities required by the tenancy agreement or law pursuant to section 55;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 65.

The tenants JC and AH rent one pad, attended the hearing and are referenced as “the tenant”).

The landlord and agent JM (“the landlord”) attended.

The attending tenant and landlord had the opportunity to make submissions as well as present affirmed testimony and written evidence. The hearing process was explained, and an opportunity was given to ask questions about the hearing process.

### *Attendance of Tenants*

The tenants LH, CC and LC did not attend the hearing. I kept the teleconference line open from the scheduled time for the hearing for an additional 40 minutes to allow them the opportunity to call. The teleconference system indicated only the landlord, the attending tenant and I had called into the hearing. I confirmed the correct call-in number and participant code for the tenant had been provided.

The landlord testified the tenants LH, CC and LC had vacated the park.

Rule 7.3 of the Rules of Procedure provides as follows:

#### **7.3 Consequences of not attending the hearing**

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 reapply.

As the tenants LH, CC and LC did not attend the hearing and no evidence was submitted on their behalf, I dismiss their applications without leave to reapply.

### *Unrelated Claims*

The tenant's application included unrelated claim(s) in addition to the tenant's application to dispute the landlord's One Month Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy. Therefore, I find that the additional claim(s) are not related to whether the tenancy continues.

Therefore, all the tenant's claims except for the application to dispute the landlord's Notice and reimbursement of the filing fee are dismissed with leave to reapply.

The tenant may reapply for these claims subject to any applicable limits set out in the Act, should the tenancy continue.

### Issue(s) to be Decided

Is the tenant entitled to cancellation of a 10 Day Notice, a One Month Notice and reimbursement of the filing fee?

### Background and Evidence

The tenant stated they have rented from the landlord since May 1, 2019. Current rent is \$750.00. No tenancy agreement was submitted. The landlord operates a manufactured home park.

The tenant submitted a copy of a 10 Day Notice in the RTB form dated November 4, 2022. The tenant did not dispute the Proof of Service in the RTB form stating the landlord served the tenant with the Notice on November 4, 2022.

The tenant stated they were also served with a Two Month Notice. However, no copy of any Two Month Notice was submitted.

The tenant applied to cancel both Notices on October 16, 2022. The tenant remains in occupancy. The landlord asked for an Order of Possession.

The tenant stated they were not in arrears of rent. They said the landlord insisted that all payments be in cash, and he never issued a receipt.

The landlord stated the tenant did not pay the outstanding rent and remain in arrears. The landlord did not submit a reliable ledger or other evidence of payment.

### Analysis

#### *Cancellation of 10 Day Notice*

The Notice provided that the tenant must pay all the unpaid rent and any unpaid utilities or apply for dispute resolution within five days of receiving the notice.

The 10 Day Notice is dated after the application to dispute. Neither party provided an acceptable explanation for the discrepancy in dates. I find I am unable to find the form and content of the Notice comply with the Act.

The tenant testified they did not owe rent, the landlord demanded cash payments, and the landlord did not issue receipts.

The most significant failure in the burden of proof rests with the absence of normal business records and admissible evidence regarding rent paid and owed. I find the landlord has failed to establish how much if anything the tenant owed for rent.

I therefore grant the tenant application to cancel the 10 Day Notice.

#### *Cancellation of Two Month Notice*

The tenant applied to cancel a Two Month Notice. No specifics were provided of the details of the Notice or when it was served.

The landlord bears the onus of establishing the grounds for the issuance of the Notice. However, no copy of the Two Month Notice was submitted.

I am unable to determine if any such Notice complied with the form and content requirements of the Act. I am unable to ascertain what grounds the landlord relied upon.

Accordingly, I grant the tenant's application and cancel the Two Month Notice.

#### *Filing fee*

The tenant has been successful. I therefore grant the tenant reimbursement of the filing fee of \$100.00 which may be deducted from rent on a one-time basis.

Conclusion

The 10 Day Notice and Two Month Notice are cancelled and of no effect. The tenancy shall continue until it is ended under the Act or the agreement.

The tenant is granted leave to reapply under sections 55 and 65.

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 24, 2023

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Residential Tenancy Branch