



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNR, FFT

### Introduction

Under section 51 of the Manufactured Home Park Tenancy Act (the “Act”), this hearing dealt with the tenant’s April 21, 2023, application to the Residential Tenancy Branch for:

- (i) an order cancelling a 10 Day Notice to End Tenancy for Unpaid Rent (the “Notice”) pursuant to section 39 of the Act; and
- (ii) authorisation to recover the cost of the filing fee under section 65 of the Act.

### Issues

- 1. Is the tenant entitled to an order cancelling the Notice?
- 2. If not, is the landlord entitled to an order of possession?
- 3. Is the tenant entitled to recover the cost of the filing fee?

### Background and Evidence

In reaching this decision, I have considered all relevant evidence that complied with the *Rules of Procedure*. Only the necessary oral and documentary evidence that helped resolve the issues of the dispute and explain the decision is included below.

The tenancy began 12 years ago. Rent is due on the first day of the month.

The landlord served the Notice on April 17, 2023, by attaching a copy to the door of the rental unit. All pages of the Notice were served and submitted into evidence.

The landlord affirmed that:

- the rent was raised from \$230.00 to \$235.00 effective March 1, 2023. The tenant was served with a notice of rent increase at the end of November 2022. The landlord did not provide any documentary evidence showing that a notice of rent increase was prepared and served on the tenant.
- the tenant is currently \$10,120.00 in arrears representing 44 months of unpaid rent. The landlord submitted as evidence a ledger, which confirmed that, as of May 16, 2023, the tenant had outstanding rental arrears of \$9,710.00.
- there was no agreement for the tenant to engage in work in lieu of paying rent.

The tenant affirmed that:

- the tenant never received a notice of rent increase from the landlord.
- the tenant accumulated rental arrears because the tenant did over \$100,000.00 worth of work for the landlord, including removing mobile homes and upgrading the sewage system.
- the tenant had an agreement with the landlord where the tenant could engage in work for the landlord in lieu of paying rent. The tenant did not provide any documentary evidence showing that such an agreement with the landlord existed.

### Analysis

Under section 35 of the Act, in order for a rent increase to be valid, a landlord must give a tenant a notice of a rent increase at least 3 months before the effective date of the increase. The notice of a rent increase must be in the approved form.

In relation to the rent increase, the landlord affirmed that the tenant was served with a notice of rent increase at the end of November 2022. The landlord did not provide any documentary evidence showing that a notice of rent increase was prepared and served on the tenant.

In relation to the rent increase, the tenant affirmed that the tenant never received a notice of rent increase from the landlord.

A useful guide regarding conflicting testimony, and frequently used in cases such as this, is found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), which states at pages 357-358:

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those circumstances.

Taking into consideration all of the evidence before me, I find the tenant's submissions to be more reasonable because the landlord did not provide any documentary evidence showing that a notice of rent increase was prepared and served on the tenant. A reasonable person in the landlord's position would have provided a copy of the relevant notice of rent increase as evidence and also provide evidence of having actually served the notice of rent increase on the tenant. As the landlord did not provide any documentary evidence in this regard, I find that the rent increase from \$230.00 to \$235.00 effective March 1, 2023, to be invalid. Therefore, I find that the rent is currently \$230.00.

Section 20 of the Act requires tenants to pay rent the day it is due unless they have a legal right to withhold rent. Section 39 of the Act allows landlords to end a tenancy with a *10 Day Notice to End Tenancy for Unpaid Rent* on any day rent remains unpaid after the day rent is due.

In relation to the unpaid rent, the landlord affirmed that:

- the tenant is currently \$10,120.00 in arrears representing 44 months of unpaid rent. The landlord submitted as evidence a ledger, which confirmed that, as of May 16, 2023, the tenant had outstanding rental arrears of \$9,710.00.
- there was no agreement for the tenant to engage in work in lieu of paying rent.

In relation to unpaid rent, the tenant affirmed that:

- the tenant accumulated rental arrears because the tenant did over \$100,000.00 worth of work for the landlord, including removing mobile homes and upgrading the sewage system.
- the tenant had an agreement with the landlord where the tenant could engage in work for the landlord in lieu of paying rent. The tenant did not provide any documentary evidence showing that such an agreement with the landlord existed.

Relying on the above-mentioned guide regarding conflicting testimony found in *Faryna v. Chorny* (1952), 2 D.L.R. 354 (B.C.C.A.), I find the landlord's submissions to be more reasonable because the tenant did not provide any documentary evidence showing that

there was an agreement with the landlord where the tenant could do work for the landlord in lieu of paying rent. A reasonable person in the tenant's position would ensure there is some written record of this agreement before engaging in over \$100,000.00 worth of work for the landlord. Therefore, I find that there was no agreement with the landlord where the tenant could do work for the landlord in lieu of paying rent. Thus, the tenant did not have a valid reason to withhold rent.

The landlord's evidence shows that the tenant is currently \$10,120.00 in arrears representing 44 months of unpaid rent. As mentioned above, I find that the tenant did not have a valid reason to withhold rent. Also mentioned above, I find that the rent increase from \$230.00 to \$235.00 effective March 1, 2023, to be invalid. Therefore, the rent for March to June 2023 would be \$230.00 instead of \$235.00. Thus, I am reducing the amount of rental arrears by \$20.00 to account for the invalid rent increase. Accordingly, I find that the tenant is currently \$10,100.00 in rental arrears. Therefore, I find on a balance of probabilities that the Notice was given for a valid reason. I also find that the Notice complies with the form and content requirements of section 45. As a result, the tenant's application to cancel the Notice is dismissed.

Based on the above findings, the landlord is granted an order of possession under section 48(1) of the Act. A copy of the order of possession is attached to this Decision and must be served on the tenant.

Since the application relates to a section 39 notice to end tenancy, the landlord is entitled to an order for unpaid rent under section 48(1.1) of the Act. Therefore, the tenant is ordered to pay \$10,100.00 in unpaid rent to the landlord.

A monetary order for the amount of \$10,100.00 is attached to this Decision and must be served on the tenant.

Since the tenant was not successful in its application, the tenant's application to recover the cost of the filing fee under section 65 of the Act is dismissed.

### Conclusion

The application is dismissed without leave to reapply. The landlord is awarded an order of possession and a monetary order in the amount of \$10,100.00.

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: July 12, 2023

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Residential Tenancy Branch