



# Dispute Resolution Services

Residential Tenancy Branch  
Ministry of Housing

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## **DECISION**

### **Introduction and Preliminary Matters**

This hearing was convened under the *Residential Tenancy Act* (The RTA) and the *Manufacture Home Park Tenancy Act* (the MHPTA) in response to cross applications from the parties.

B.M.W. filed their application pursuant to the RTA on January 18, 2024. B.M.W. seeks:

- Cancellation of the Landlord's 10 Day Notice for Unpaid Rent (the Notice).
- An order requiring the Landlord to comply with the *Act, Regulation*, or tenancy agreement.

The Landlord filed their application pursuant to the MHPTA on January 22, 2024, and seeks the following:

- An order of possession pursuant to the Notice.
- A monetary order for unpaid rent and utilities.
- Their \$100.00 filing fee.

At the start of the hearing, T.R., the Landlord's lawyer, advised me that B.M.W. has named the Landlord, which T.R. represents, as well as L.W.LLP, the law firm whose address is listed as the Landlord's Records Office, as respondents. They testified that B.M.W. has mistakenly named L.W.LLP.

B.M.W. did not testify if they served L.W.LLP in any way and only submitted documentary evidence regarding service of the Landlord and their lawyer.

It is not clear to me why B.M.W. named the Landlord's Records Office, as well as the Landlord, as Respondents. Rule 4.2 of the Residential Tenancy Branch's Rules of Procedure states that I can amend an application in circumstances that can reasonably be anticipated. The Landlord in this case has already been named as a Respondent and their counsel has accepted service on their behalf. After the hearing I amended B.M.W.'s application to remove L.W.LLP as a respondent. The style of cause on the cover page of my decision reflects this amendment.

### **Service**

T.R. acknowledged receipt of B.M.W.'s application and documentary evidence, on behalf of the Landlord, by registered mail, in accordance with both the RTA and MHPTA. B.M.W. submitted a tracking number, which I have copied on the cover page of

my decision. Pursuant to T.R.'s acknowledgment, I find B.M.W. served the Landlord with their application and documentary evidence in accordance with both the RTA and the MHPTA.

B.M.W. acknowledged receipt of the Landlord's application and documentary evidence, attached to the Rental Unit's door, in accordance with the RTA and MHPTA.

T.R. testified that the B.M.W. is not the tenant, and that the Landlord has no contractual relationship with B.M.W. T.R. testified that R.M., whom they named as a respondent in their cross application, along with M.R. and B.M.W., is the Tenant.

T.R. testified that the Landlord or an agent of the Landlord served R.M. by attaching their application, as well as evidence, to the Rental Unit's door. T.R. did not testify how or when the Landlord or an agent of the Landlord served the Landlord's application and documentary evidence at the Rental Unit, for the purposes of serving R.M. T.R. testified that R.M. resides at another city, W.L., and that the Landlord has found a possible address for R.M. at W.L., which they used to serve R.M. with a copy of the Landlord's eviction notice in the second week of January 2024.

Before I can give any orders against R.M., I must be satisfied that the Landlord or an agent of the Landlord served R.M. with their application. The Landlord cannot rely on B.M.W.'s application to seek an order of possession if I find that B.M.W. is not a tenant and has no standing to dispute the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent. If I make such a finding, B.M.W.'s application, which was brought without R.M.'s involvement would simply be dismissed. The Landlord must then satisfy me that they have served R.M. with not only their eviction notice, but also their application for an order of possession pursuant to the eviction notice.

At the start of the hearing, I asked T.R. how they served R.M. with the Landlord's application and documentary evidence. T.R. testified that this was done by posting at the Rental Unit's door. T.R. did not provide further details of this service, but B.M.W. acknowledged that they found the Landlord's application and documentary evidence at the Rental Unit's door.

The Residential Tenancy Branch's Rules of Procedure state that each respondent must be served with copies of an applicant's Proceeding Package and additional records relied on at the hearing. Service of records and the Proceeding Package are governed by sections 88 and 89 of the RTA and sections 81 and 82 of the MHPTA. The Landlord's application has been brought pursuant to the MHPTA. Section 82 of the MHPTA sets out the rules for service of applications. Section 82 of the MHPTA has

different rules for service of applications in relation to monetary orders and for applications in relation to orders of possession.

82(2) An application by a landlord under section 48 **order of possession for the landlord** must be given to the tenant in one of the following ways:

- a) by leaving a copy with the tenant;
- b) by sending a copy by registered mail to the address at which the tenant resides;
- c) by leaving a copy at the tenant's residence with an adult who apparently resides with the tenant;
- d) by attaching a copy to a door or other conspicuous place at the address at which the tenant resides;**
- e) [Repealed 2023-47-56.]
- f) by any other means of service provided for in the regulations.

However, section 82(1) of the MHPTA, which dictates service of applications in relation to monetary orders states that an application must be served as follows:

82(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 6, when required to be given to one party by another, must be given in one of the following ways:

- a) by leaving a copy with the person;
- b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- e) [Repealed 2023-47-56.]
- f) by any other means of service provided for in the regulations.

In this case, in relation to the application for the monetary order, the Landlord did not serve their Proceeding Package to R.M. by any of the methods listed under section 82(1) above. I have reviewed the Landlord's application. Submitted proof of service documents relate solely to the Landlord's eviction notice and not the Proceeding Package (the Landlord's application). Beyond the submitted proof of service documents that relate to the eviction notice, the only evidence regarding service of the Proceeding Package is what T.R. testified to during the hearing. T.R. testified that an agent of the Landlord posted the Proceeding Package at the Rental Unit's door. Posting at the door is not an acceptable method of service for a monetary application.

I do not have any evidence about whether the Landlord mailed their Proceeding Package to the address T.R. testified the Landlord found for R.M. in W.L., nor did T.R.

explain where this address came from. It does not appear that this address was provided to the Landlord by R.M. as a forwarding address.

For the purposes of the application in relation to the order of possession, posting at the door is acceptable but at a place in which the tenant resides. In this case both the Landlord's counsel and the occupant of the Rental Unit testified that R.M. resides in another city. In this case there is clear evidence that the tenant has not resided at the Rental Unit since at least November 2022 (approximately 18 months prior to the hearing), I cannot find that the applicant has met their burden of proving, on a balance of probabilities, that they have notified the respondent of the claims against them in accordance with section 82(2) of the MHPTA.

The Landlord submitted copies of several emails between themselves and R.M. It is unclear to me why the Landlord did not apply for substituted service by email prior to the hearing, an option that is still available to the Landlord. However, for the purposes of this hearing, I find that the Landlord failed to satisfy me, on a balance of probabilities, that they served R.M. with their application. Therefore, the Landlord's application against R.M., whom they say is the only party they have a contractual relationship with, is dismissed with leave to reapply.

## **Background and Evidence**

B.M.W. testified that they began residing at the Rental Unit in November 2022, after R.M. inherited the Rental Unit from M.R., who is now deceased. B.M.W. described themselves as a friend of R.M. They testified that R.M. was at the manufactured home park in which the Rental Unit is in (the "**Park**") paying rent to the Landlord prior to their arrival and that they have never personally paid any rent to either the Landlord or to R.M.

B.M.W. testified that on the date of their arrival at the Park, the Park's manager, L.P., met with them to ask who they were. B.M.W. testified that they, R.M. and L.P. all met in December 2022 to discuss the Park's rules (the "**Meeting**"). B.M.W. testified that during the meeting, R.M. introduced them to L.P. and provided L.P. with "12 post-dated cheques" for rent, effective until January 2024.

T.R. referred me to a copy of a signed written statement submitted by L.P., dated January 24, 2024. In this written statement, L.P. states that R.M. has provided them rent by cheque in-person, by attending L.P.'s home, only on a few occasions and the rest of the time they have mailed their rent cheques, "usually two at a time", directly to L.P. L.P. further states that there has never been an instance where B.M.W. "was present to witness [R.M.] handing me pad rent cheques".

T.R. further testified that as far as the Landlord is concerned, they have never made any agreements with B.M.W., and at no time have they engaged in or agreed to an assignment of the tenancy from R.M. to B.M.W. They testified that after M.R. became sick and was admitted to hospital, R.M. took over the tenancy and signed the Park's rules. M.R., who is now deceased, along with R.M., are both listed as registered owners of the Rental Unit on a personal property registry search result (from September 2023) submitted by the Landlord as evidence.

T.R. testified that the monthly pad rental is \$517.04, due on the first day of every month. B.M.W. testified that they have never paid any rent to anyone, and that they have not been in contact with R.M. since August 2023. B.M.W. testified that R.M. resides in W.L.

T.R. provided testimony regarding R.M.'s failure to pay rent since September 2023. T.R. referred me to the submitted copy of the Landlord's 10 Day Notice to End Tenancy for Unpaid Rent, signed by T.R. on January 10, 2024 (the "**Notice**"). The Notice has an effective date of January 25, 2024.

T.R. testified that the Landlord served R.M. at R.M.'s "suspected address" in W.L., by registered mail, and provided a tracking number, which shows that the package was delivered. In addition to this, T.R. testified that the Notice was served to R.M., and all other occupants of the Rental Unit, by posting the same at the Rental Unit's door.

B.M.W. acknowledged that they received the Notice at the Rental Unit's door on January 14, 2024. The Landlord's signed and witnessed proof of service form states that J.J.P., an agent of the Landlord, attached the Notice to the Rental Unit's door on January 11, 2024. L.P., the Landlord's other agent, witnessed this service and signed the proof of service form alongside J.J.P.

The Notice states that R.M. and B.M.W. have failed to pay rent since September 2023. B.M.W. testified that they should be recognized as a tenant because they were named on the Notice. T.R. testified that they named B.M.W. for the sake of completion to ensure they would not have to re-do the process and it is in no way an admission that B.M.W. is the Landlord's tenant.

T.R. referred me to emails between an agent of the Park, P.L., and R.M., from September 2022, August 2022, and June 2023. T.R. also testified regarding L.P. rent ledger to explain how the Landlord keeps track of unpaid rent.

## Analysis

There is no evidence before me that B.M.W. is anything other than an occupant or sub-tenant. B.M.W. has never paid any rent to the Landlord as they have testified and there is no evidence before me that the Landlord ever even attempted to collect rent from B.M.W. B.M.W. further testified that they did not sign a rental agreement with the Landlord.

T.R. testified that the Landlord never agreed to an assignment of the tenancy, nor does it appear that such negotiations ever even took place.

I agree with T.R. that naming an occupant/sub-tenant on a notice to end tenancy does not mean the Landlord is admitting to a contractual relationship.

Based on all the documentary evidence submitted by B.M.W. and the Landlord, as well as their testimonies, I find that B.M.W. is not the Landlord's tenant and they had no right to dispute the Landlord's Notice. It is up to R.M. who is the owner of the manufactured home and the Landlord's tenant to dispute the Landlord's Notice.

In the result, B.M.W.'s application is dismissed in its entirety, without leave to reapply. B.M.W. did not testify why they are seeking an order of compliance against the Landlord, or what section of the MHPTA or RTA they are basing this aspect of their application; this portion of their application is also dismissed without leave to reapply.

The Landlord's lawyer testified that if I dismiss B.M.W.'s application, I must grant the Landlord an Order of Possession pursuant to section 48 of the MHPTA (equivalent of section 55 of the RTA). I disagree. Sections 48 and 55 of the respective acts state that "if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession... if [the director dismisses the tenant's application]".

In this case the tenant has not applied for dispute resolution, B.M.W. has. B.M.W., as I have already found, is not the Landlord's tenant and has no contractual relationship with the Landlord. This is what the Landlord themselves has argued in this application. Any orders of possession must be pursuant to the Landlord's own application against R.M., who I find is the tenant. While the Landlord has filed their own application, pursuant to the MHPTA, to seek an order of possession, I have already found that the Landlord has not served R.M. in accordance with the MHPTA and therefore the Landlord's application against R.M. is dismissed with leave to reapply.

The Landlord has named two other individuals as Respondents. M.R. is deceased and T.R. testified that the only tenant recognized by the Landlord is R.M. (which, as a corollary, would mean the Landlord does not consider M.R.'s estate to be their tenant). The third individual is B.M.W. I cannot give an order against an individual that the Landlord has no contractual relationship with. I am sympathetic with the Landlord in this case, but the solution is to properly serve the actual tenant and then seek an order of possession from the director against the actual tenant and all occupants of the Rental Unit.

The Landlord can file a new application, along with a separate subservice application to seek permission to serve R.M. with their new application by email. Or the Landlord can serve R.M. by any other method listed under section 82 of the MHPTA, at a place where the Tenant resides.

As I have already dismissed the Landlord's application with leave to reapply, I will not make a finding regarding whether the Landlord has served the Notice to R.M. in accordance with section 81 of the MHPTA. The Landlord and their counsel are advised to review section 81 of MHPTA in detail. In a future hearing, the arbitrator must be satisfied that the Notice was served to either a "forwarding address provided by the tenant" or where the tenant resides or by any other method allowed in the act.

As the Landlord was not successful in this application, their application to recover the filing fee is dismissed without leave to reapply.

## **Conclusion**

B.M.W.'s application against the Landlord is dismissed in its entirety without leave to reapply. B.M.W. and the Landlord do not have a contractual relationship.

The Landlord's application against the deceased respondent, M.R., is dismissed, without leave to reapply, because the Landlord contends that the deceased and their estate are no longer the tenants and instead R.M. is their only tenant.

The Landlord's application against B.M.W. is dismissed, without leave to reapply, because the Landlord and B.M.W. do not have a contractual relationship. The Landlord must seek rent against the only person they say is their tenant: R.M.

The Landlord's application against R.M., for an order of possession and a monetary order for unpaid rent is dismissed with leave to reapply, because I am not satisfied that R.M. was notified of the claims made against them. The Landlord's application to recover the filing fee 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 *Residential Tenancy Act*.

Dated: February 21, 2024

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Residential Tenancy Branch