



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

Dispute Codes      CNC, FFT, OPC-DR, FFL

### Introduction

This hearing dealt with cross-applications filed by the parties. On December 15, 2023, the Tenant made an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 40 of the *Manufactured Home Park Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

On December 14, 2023, the Landlord made an Application for Dispute Resolution seeking an Order of Possession based on the Notice pursuant to Section 40 of the *Act* and seeking to recover the filing fee pursuant to Section 65 of the *Act*.

This hearing was scheduled to commence via teleconference at 9:30 AM on March 5, 2024.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited, and they were reminded to refrain from doing so. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package to the Landlord by placing it into his mail slot on December 22, 2023. The Landlord advised that he

received this package, and that he was prepared to respond to it despite it being served in a manner that is not permitted under Section 82 of the *Act*. As such, I am satisfied that the Landlord was duly served this package.

In addition, he confirmed that he did not submit any documentary evidence for consideration on this file.

The Landlord advised that he served the Tenant with the Notice of Hearing and evidence package by attaching it to the Tenant's door on December 20, 2023, and the Tenant confirmed that he received this package. As such, I have accepted all of the Landlord's evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?
- Is the Landlord entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on May 1, 2014, that the rent was currently established at an amount of \$647.50 per month, and that it was due on the first day of each month. A copy of the signed tenancy agreement was submitted as documentary evidence for consideration.

The Landlord advised that the Notice was served to the Tenant by being placed in the Tenant's mailbox on November 30, 2023. He referenced a signed proof of service form to corroborate this service. The Tenant confirmed that he received this on or around December 3, 2023. The reason the Notice was served was because of "Non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order." As well, the effective end date of the tenancy was noted as December 31, 2023, on the Notice.

The Landlord advised that the Tenant was Ordered to comply with nine issues by October 31, 2023, as per a previous Decision dated September 27, 2023 (the relevant file number is noted on the first page of this Decision). He referenced documentary evidence submitted which demonstrated that the Tenant has still not complied with these Orders, despite being provided with an additional month to do so. In fact, he testified that, since approximately a month ago, the Tenant has brought another dilapidated truck onto the site. He stated that this vehicle has a flat tire and a broken driveshaft, and he is unsure if it is insured.

The Tenant advised that his vehicle was stolen on November 10, 2023, and that he brought this new truck onto his site on November 23, 2023. He testified that he told the Landlord that he could come by and see the insurance papers at any time. He confirmed that he did not comply with the Orders in the September 27, 2023, Decision as he was sick, and his friends were unreliable. Furthermore, he acknowledged that he did not even comply with these Orders by November 30, 2023, and that they are still not fully complied with. However, he stated that he "did the best [he] could."

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 45 of the *Act* requires that any notice to end tenancy issued by the Landlord must be signed and dated by the Landlord; give the address of the rental unit; state the

effective date of the notice, state the grounds for ending the tenancy; and be in the approved form. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 45, and I find that it is a valid Notice.

Based on the undisputed evidence before me, I am satisfied that the Notice was placed in the Tenant's mailbox on November 30, 2023, and pursuant to Section 83 of the *Act*, this Notice was deemed received on December 3, 2023. According to Section 40(4) of the *Act*, the Tenant had 10 days to dispute this Notice, and Section 40(5) of the *Act* states that *"If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date."*

After being deemed to have received the Notice, the tenth day fell on Wednesday December 13, 2023, and the undisputed evidence is that the Tenant disputed this Notice on December 15, 2023. I find it important to note that the information with respect to the Tenant's right to dispute the Notice is provided on the first and fourth pages of the Notice.

Ultimately, as the Tenant did not dispute the Notice on time, I am satisfied that the Tenant was conclusively presumed to have accepted the Notice, pursuant to Section 40(5) of the *Act*. As such, I dismiss the Tenant's Application in its entirety.

Furthermore, the consistent and undisputed evidence is that the Tenant did not comply with the Orders set forth in the September 27, 2023, Decision. As such, I find that the Landlord is entitled to an Order of Possession pursuant to Section 48(2) of the *Act*. Consequently, I grant an Order of Possession to the Landlord effective at **1:00 PM on March 31, 2024, after service of this Order** on the Tenant.

As the Tenant was not successful in this Application, I find that the Tenant is not entitled to recover the \$100.00 filing fee.

As the Landlord was successful in this Application, I find that the Landlord is entitled to recover the \$100.00 filing fee.

Pursuant to Section 65 of the *Act*, I grant the Landlord a Monetary Order as follows:

**Calculation of Monetary Award Payable by the Tenant to the Landlord**

Item	Amount
Filing fee	\$100.00
<b>Total Monetary Award</b>	<b>\$100.00</b>

Conclusion

The Tenant's Application for Dispute Resolution is dismissed without leave to reapply.

Based on the above, I grant an Order of Possession to the Landlord effective at **1:00 PM on March 31, 2024, after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

In addition, the Landlord is provided with a Monetary Order in the amount of **\$100.00** in the above terms, and the Tenant must be served with **this Order** as soon as possible. Should the Tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: March 5, 2024

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Residential Tenancy Branch