



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes CNC FFT

Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 40; and
- authorization to recover the filing fee for this application, pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to call witnesses, and to make submissions.

Pursuant to Rule 6.11 of the RTB Rules of Procedure, the Residential Tenancy Branch's teleconference system automatically records audio for all dispute resolution hearings. In accordance with Rule 6.11, persons are still prohibited from recording dispute resolution hearings themselves; this includes any audio, photographic, video or digital recording. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with section 82 of the *Act*, I find that the landlord duly served with the tenant's application. As all parties confirmed receipt of each other's evidentiary materials, I find that these were duly served in accordance with section 81 of the *Act*.

Preliminary Issue: Service of 1 Month Notice

The tenant testified that the landlord had served the tenant with the 1 Month Notice dated November 3, 2022 through a social media messaging service, which does not meet the service requirements as stipulated in the legislation.

The landlord confirmed that the tenant was served with the 1 Month Notice through the messaging service. The landlord testified that they had communicated with the tenant, who requested that the landlord send the document through the messenger service.

The landlord submitted a screenshot of the conversation that took place on October 18, 2022 where the tenant stated the following: “could you take a picture of the papers instead of sending them. The mail is so slow”. The landlord’s screen shot shows images of the documents that were sent to the tenant through the messaging service. The landlord did not provide evidence to show that the tenant was served in another manner.

I note that section 81 of the *Act* sets out how documents must be given or served on another party:

81 All documents, other than those referred to in section 82 [*special rules for certain documents*], that are required or permitted under this Act to be given to or served on a person must be given or served 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 ordinary mail or 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 ordinary mail or registered mail to a forwarding address provided by the tenant;
- (e) by leaving a copy at the person's residence with an adult who apparently resides with the person;
- (f) by leaving a copy in a mailbox or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- (g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- (h) by transmitting a copy to a fax number provided as an address for service by the person to be served;
- (i) as ordered by the director under section 64 (1) [*director's orders: delivery and service of documents*];
- (j) by any other means of service provided for in the regulations.

As noted in Policy Guideline #12 about Service Provisions, “Failure to serve documents in a way recognized by the Legislation may result in the director determining that the party was not properly served with the document.”

I am not satisfied that the landlord had properly served the tenant with the 1 Month Notice in accordance with the service requirements as set out in section 81 of the *Act*, nor am not satisfied that the landlord was granted an order under section 64 of the *Act* to serve the tenant through any other method.

As the landlord did not meet the service requirements for service of the 1 Month Notice dated November 3, 2022, I allow the tenant’s application to cancel the 1 Month Notice. This 1 Month Notice is cancelled, and is of no continuing force or effect. The tenancy is to continue until ended in accordance with the *Act*.

I allow the tenant to recover the filing fee. I allow the tenant to implement a monetary award of \$100.00 for the filing fee by reducing a future monthly rent payment by that amount.

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: April 06, 2023

Residential Tenancy Branch