



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution filed by the Tenant under the *Manufactured Home Park Tenancy Act* (the “Act”), seeking to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the “10 Day Notice”) and to recover the \$100.00 filing fee.

The hearing was originally convened by telephone conference call on September 13, 2017, at 10:30 AM and was attended by the Tenant, the Witness for the Tenant, who is the Tenant’s father, and the agent for the Landlord (the “Agent”), L.S. All parties provided affirmed testimony. The hearing was subsequently adjourned at the request of the Agent and with the agreement of the Tenant, and an interim decision was made on September 19, 2017. The reconvened hearing was set for December 1, 2017, at 9:30 AM and a copy of the interim decision and the Notice of Hearing was sent to each party by the Residential Tenancy Branch (the “Branch”).

The hearing was reconvened by telephone conference call on December 1, 2017, at 9:30 AM. The hearing was attended by the Tenant, the Witness, A.D., the Landlord, and legal counsel for the Landlord. All parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

At the request of the Tenant, a copy of the decision will be mailed to them at the dispute address. At the request of the Landlord, a copy of the decision and any Order of Possession issued will be e-mailed to the Landlord’s legal counsel at the e-mail address provided in the hearing.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. However, I refer only to the relevant facts and issues in this decision.

### Preliminary matters

At the outset of the hearing legal counsel for the Landlord stated that no documentary evidence was submitted by the Landlord as they did not have sufficient time to do so prior to the original hearing. In any event, legal counsel for the Landlord stated that it is their belief, as well as the belief of the Landlord, that there is sufficient documentary evidence before me from the Tenant in order to proceed. As a result, the hearing proceeded as scheduled.

Although witness testimony was given during the course of the hearing, the witness was excluded from the proceedings when not providing testimony.

#### Issue(s) to be Decided

Is there a valid reason to cancel the 10 Day Notice under the *Act*?

If so, is the Tenant entitled to recovery of the filing fee pursuant to sections 60 and 65 of the *Act*?

If the Tenant is not successful in seeking to cancel the 10 Day Notice, is the Landlord entitled to an Order of Possession pursuant to section 48 of the *Act*?

#### Background and Evidence

The tenancy agreement in the documentary evidence before me indicates that it was signed by the Tenant and the Landlord on November 21, 2016, for a periodic tenancy commencing December 1, 2015. Both parties agreed that there was a clerical error in the tenancy agreement regarding the year for which the tenancy was to commence and testified that the tenancy in fact began on December 1, 2016. The tenancy agreement indicates that rent in the amount of \$500.00 is due on the first day of each month and stipulates that a \$25.00 late fee will be charged each month that rent is not paid on time. In the hearing the parties agreed that these are the correct terms of the tenancy agreement.

There was also consensus among the parties that an agreement had been reached between the Landlord and the Witness, who is the Tenant's father, whereby goods valued at approximately \$4,500.00 were exchanged to cover the cost of 9 months of the Tenant's rent, beginning December 1, 2016. Although the Tenant's documentary evidence indicated that rent was therefore not due until October 1, 2017, in the hearing the parties agreed that this was a miscalculation on the part of the Tenant and that the \$4,500.00 in goods was in fact exchanged to cover the cost of rent from

December 1, 2016 – August 31, 2017.

Despite the foregoing, the parties disagreed about the nature of the agreement and the exact goods exchanged for the 9 months of free rent.

Legal counsel for the Landlord argued that prior to the commencement of the tenancy agreement between the Tenant and the Landlord, an oral agreement had been reached by the Landlord and the Tenant's father whereby farming equipment valued at over \$50,000.00 would be purchased by the Landlord from the Tenant's father (the "purchase agreement"). Legal counsel for the Landlord submitted that after this purchase agreement was reached, the Tenant and the Landlord entered into the tenancy agreement whereby the Tenant agreed to rent the mobile home site at a cost of \$500.00 a month. Legal counsel for the Landlord argued that an agreement ancillary to the purchase agreement was then reached between the Landlord and the Tenant's father, whereby the Tenant's father agreed to forgive \$4,500.00 of the money owed under the purchase agreement for irrigation equipment and a bailer, among other things, in exchange for 9 months of free rent for the Tenant.

The Tenant and the Tenant's father disagreed with the above submissions. The Tenant testified that although his father had an agreement with the Landlord regarding the purchase of property and farming equipment, this agreement was separate from the agreement reached between himself, his father, and the Landlord regarding the first 9 months of rent. The Tenant testified that a separate agreement was entered into by himself, his father, and the Landlord whereby a squeeze chute and a pool table valued together at \$4,500.00 were given to the Landlord by the Tenant's father in lieu of 9 months' rent. The Tenant's father provided an affidavit and affirmed testimony in the hearing confirming that only the pool table and a squeeze chute were exchanged for rent.

Legal counsel for the Landlord stated that on July 8, 2017, the Landlord became aware that the Tenant and the Tenant's father had trespassed onto his property and stolen back equipment that was part of the original purchase agreement and valued at over \$20,000.00. Legal counsel for the Landlord argued that the equipment exchanged as security for the 9 months of rent was among the \$20,000.00 worth of equipment stolen, and argued that the Tenant and the Tenant's father therefore breached the agreement reached whereby 9 months of rent would be forgiven. Legal counsel for the Landlord stated that a letter was sent to the Tenant demanding the return of the stolen equipment and that when the equipment was not returned, a 10 Day Notice was served on the Tenant.

The Tenant denied stealing anything from the Landlord but testified that he did attend the Landlord's property in an attempt to repair irrigation equipment during the wildfire season. The Tenant's father admitted to taking several items from the Landlord's property but testified that the Tenant was not present with him and stated that the items taken were part of the original purchase agreement between the Landlord and himself, not the agreement relating to the payment rent. As a result the Tenant argued that rent for December 1, 2016 – August 31, 2017, was paid in full and therefore the 10 Day Notice dated August 9, 2017, is invalid.

Legal counsel for the Landlord stated that since being served with the 10 Day Notice, the Tenant has not paid any rent and argued that even if I find that rent for December 1, 2016 – August 31, 2017, was paid; the Tenancy is none the less ended as the Tenant has failed to pay rent for September, October, November and December. The Tenant acknowledged that they have not paid rent since being served with the 10 Day Notice, however, both parties agreed that the only Notice to End Tenancy served on the Tenant by the Landlord, is the 10 Day Notice dated August 9, 2017, for the non-payment of rent for December 1, 2017 – August 31, 2017. Legal counsel for the Landlord argued that it is not the Landlord's responsibility to chase rent and therefore another Notice to End tenancy was not served or required.

### Analysis

Ending of a tenancy is a serious matter and when a tenant disputes a Notice to End Tenancy, the landlord bears the burden to prove that they had sufficient cause under the *Act* to issue the Notice to End Tenancy.

Although legal counsel for the Landlord has argued that the Tenant and the Tenant's father effectively withdrew the rent "paid" for December 1, 2016 – August 31, 2017, when they stole back farming equipment that was essentially held as security by the Landlord for this rent, for the following reasons, I do not agree.

First, although the parties provided significant testimony and submissions regarding the nature of the agreement to forego nine months' worth of rent, no written agreement was before me for consideration and the parties could not agree in the hearing on exactly which goods had been exchanged for the purpose of the payment of rent. As a result, I find that the Landlord has failed to establish, on a balance of probabilities, that the theft of any equipment from their property, should it have occurred, related to the matter of rent.

Further to this, the parties agreed in the hearing that goods in the amount of \$4,500.00 were in fact exchanged for nine months' worth of rent at the start of the tenancy. Although legal counsel for the Landlord argued that these goods were actually held in trust by the Landlord as security for this rent, no documentary evidence was submitted to support this argument and the testimony and evidence provided by both parties in the hearing suggested that these goods were exchanged as payment for rent, not as security that rent *would* be paid. As a result, I find that nine months of rent was in fact pre-paid for the mobile home site when the Landlord accepted the goods offered by the Tenant and his father for this rent.

Although the Landlord's legal counsel has argued that the items used to pay rent were later stolen back by the Tenant and his father, effectively negating the original exchange and agreement, I do not agree. In my mind, the original exchange of goods for the payment of rent, and the possible theft of these goods some 8 months later, are two separate and distinct events. As stated above, I have already found that the Tenant paid rent for the period of December 1, 2016 – August 31, 2017, when the Landlord accepted the goods offered by the Tenant and the Tenants father for this purpose. As a result, I find that the *possible* theft of items from the Landlord's property is unrelated to the tenancy or the payment of rent, and is therefore beyond the scope of my jurisdiction. As a result, I encourage the parties to seek independent legal advice in relation to this matter.

Based on the foregoing, I find that the Landlord has failed to establish, on a balance of probabilities, that they had cause to end the tenancy under the *Act*. As a result, the 10 Day Notice is cancelled and I order that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

As the Tenant's claim was successful, the Tenant is also entitled to a Monetary Order in the amount of \$100.00 for the recovery of the filing fee pursuant to sections 60 and 65 of the *Act*.

Although legal counsel for the Landlord argued that the tenancy should end regardless of whether or not the 10 Day Notice is cancelled because the Tenant has failed to pay subsequent rent, I only have the authority granted to me under the *Act*. As the 10 Day Notice dated August 9, 2017, is cancelled and there is no other Notice to End Tenancy before me in this dispute, the Landlord I cannot grant the Landlord an Order of Possession. However, the Tenant should be aware that they must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act,

the regulations or the tenancy agreement, unless they have a right under the *Act* to deduct all or a portion of the rent. As a result, the Landlord remains at liberty to exercise their rights under the *Act* regarding the non-payment of rent on or after September 1, 2017.

### Conclusion

The 10 Day Notice dated August 9, 2017, is cancelled and of no force or effect. As a result, I Order that the tenancy continue until it is ended in accordance with the *Act*.

Pursuant to sections 60 and 65 of the *Act*, I grant the Tenant a Monetary Order in the amount of \$100.00. The Tenant is provided with this Order in the above terms and the Landlord must be served with **this Order** as soon as possible. Should the Landlord 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: December 8, 2017

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Residential Tenancy Branch