



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNLC, MNDC, OLC, FF, O

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Landlord's Uses of the Property, for more time to make the application, for monetary compensation due to the Notice to End Tenancy, for the Landlord to comply with the Act, to recover the filing fee for this proceeding and for other considerations.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the "hearing package") by personal delivery to the Landlord's daughter while she was acting for the Landlord on May 3, 2011. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?
2. Does the Tenant need more time to make the application?
3. Is the Tenant entitled to monetary compensation and if so how much?
4. Has the Landlord complied with the Act?
5. What other considerations are there?

### Background and Evidence

There was much contradictory testimony given on the conference call. The Landlord said this situation is not a tenancy and therefore she questioned the jurisdiction of the Manufactured Home Park Act to resolve this issue. The Tenant said this tenancy started on August or September 1998 as a month to month tenancy. Rent is \$520.00 per month payable in advance of the 1<sup>st</sup> day of each month.

The Landlord said she served the Tenant with a 2 Month Notice to End Tenancy for the Landlord's Use of the Property in March of 2011. She said the Tenant told her it was the wrong form so the Landlord serviced the Tenant with a 12 Month Notice to End Tenancy for Landlord's Use of the Property dated March 11, 2011 on March 11, 2011

by personal delivery to the Tenant. The Effective Vacancy date on the Notice is April 1, 2012.

The Landlord continued to say the arrangement she has with the Tenant was the use of the mobile home site in exchange for work on her farm. She said it is an employment arrangement not a tenancy. As well the Landlord said the Tenant did not pay her monetary compensation at any time for the use of the mobile home site.

The Tenant said the Landlord told her she could rent the mobile home site on a cash basis and they would get a permit under the municipal farm labour bi laws. The Tenant said she paid the rent in cash and there were no rent receipts given. The Tenant continued to say she did not work regularly for the Landlord except to feed animals and to take care of the dogs when the Landlord was away. The Tenant continued to say she paid the Landlord rent every month from September 1998 until the Landlord refused to accept the rent payments in May, 2011. The Landlord said she did not accept any money from the Tenant because she did not want to establish grounds for a tenancy. The Tenant said rent started at \$400.00 per month for 1998 and 1999 and then increased to \$500.00 per month in the year 2000. The Tenant provided three letters from witnesses as evidence that she had discussed the rent amount with them and that she paid rent to the Landlord. The witness letters confirm rent was paid for the mobile home site to the Landlord. In addition the Tenant provided bank statements and a letter from her bank that the Tenant says shows she withdrew amounts equal to the rent amount in most months. She said that in the months that there was no withdrawal she had family help to pay the rent or other resources to pay the rent. The Landlord said the bank statements are not consistent therefore they do not proof that the Tenant paid rent. The Landlord also said the Tenant paid her own utilities as the utilities are separate for the mobile home.

The Tenant continued to say the Landlord's daughter is moving a mobile home onto the property and that is the reason for the 12 Month Notice to End Tenancy for Landlord's Use of the Property. The Tenant said she is not disputing the Notice to End Tenancy she is applying for the Landlord to comply with section 44 of the Act and compensate her the equivalent of 12 month rent at \$520.00 per month totally \$6,240.00 and to recover the filing fee for this proceeding of \$100.00 from the Landlord.

The Landlord conclude by asking if she can dispute the decision if it is found that a tenancy existed, that the Manufactured Home Park Act does have jurisdiction and that she is found to owe compensation to the Tenant.

### Analysis

The Landlord and Tenant had contradictory views of the situation that existed between them. As a result the main issue is whether a tenancy exists between them or not. If a tenancy does exist the Landlord would be responsible to compensate the Tenant under section 44 of the Act and if a tenancy does not exist then the Manufactured Home Park Act would not have jurisdiction in this situation.

Under the definitions section in the Act a tenancy agreement is defined as an agreement, whether written or oral, expressed or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities. Both the Landlord and Tenant said the Tenant has possession of the mobile home site and both said there was compensation to the Landlord for the use of that site. The Landlord said it was in trade for the Tenant's labour the Tenant said she paid cash for rent. I accept the Tenant's testimony that cash rent was paid as she provided witnesses' letters and information from her bank that establishes grounds to show that rent was paid on a regular basis. As well the Landlord did not provide any evidence that there was not a tenancy or that there was another type of agreement between the Landlord and the Tenant. In addition the Landlord said the arrangement was an employment agreement, but she had no records showing that and she said she did not declare the Tenant's labour as an expense her on her income tax. The Landlord also used a Notice to End Tenancy to end the arrangement between them therefore she had full knowledge that she was treating this as a tenancy when she told the Tenant she was ending the arrangement between them. I find that a tenancy did exist between the parties and the Manufactured Home Park Act does have jurisdiction. I order the Landlord to compensate the Tenant pursuant to section 44 of the Act as follows:

The equivalent of 12 times the monthly rent of \$520.00 = \$6,240.00

As the Tenant has been successful in this matter, she is also entitled to recover from the Landlord the \$100.00 filing fee for this proceeding. The Tenant will receive a monetary order for the balance owing in the amount of \$6,340.00.

### Conclusion

A Monetary Order in the amount of \$6,340.00 has been issued to the Tenant. A copy of the Orders must be served on the Landlord; the Monetary Order may be enforced in the Provincial (Small Claims) Court of British Columbia.

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*.

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Residential Tenancy Branch