



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, CNR, and FF

### Introduction

This hearing was scheduled in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause; to set aside a Notice to End Tenancy for Unpaid Rent; and to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution. The Tenant stated that she did not receive a Notice to End Tenancy for Cause and her application to set aside that Notice has, therefore, been set aside.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings. The Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence and it was accepted as evidence for these proceedings.

### Issue(s) to be Decided

The issues to be decided is whether the Notice to End Tenancy for Unpaid Rent, served pursuant to section 39 of the *Manufactured Home Park Tenancy Act (Act)*, should be set aside; and whether the Tenant is entitled to recover the filing fee from the Landlord for the cost of this Application for Dispute Resolution.

### Background and Evidence

The Landlord and the Tenant agree that the Tenant inherited the manufactured home when her grandfather passed away; that sometime in 2005 the Tenant and the Landlord entered into a verbal tenancy agreement, at which time the Tenant agreed to pay monthly rent of \$277.00 for the site; and that the Tenant also entered into an agreement to repay a debt owed to the Landlord by her grandfather.

The Landlord and the Tenant agree that the Tenant was served with a Notice of Rent Increase, which increased the rent from \$277.00 to \$287.00, effective December 01, 2006, and that the Tenant had paid this increased amount. The Landlord stated that this Notice of Rent Increase was mailed to the Tenant and the Tenant stated that she believes it was delivered to her in person.

The Landlord stated that on August 31, 2008 he mailed a second Notice of Rent Increase to the Tenant to the address noted on the Notice of Rent Increase, which indicated the rent would be increasing to \$297.00 effective December 01, 2008. The Tenant stated that she was residing at that address on August 31, 2008 but she did not receive the Notice until she received it as evidence for these proceedings.

The Landlord stated that on September 29, 2008 he mailed a letter to the address noted on the Notice of Rent Increase in which he declares that the Tenant received a notice of the rent increase and that she must pay the rent increase. The Tenant stated that she was residing at that address on September 29, 2008 but she did not receive the letter until she received it as evidence for these proceedings.

The Agent for the Landlord stated that his mother wrote a note to the Tenant, dated December 04, 2008, in which she declared that the rent was increased to \$297.00 on December 01, 2008 and that the Tenant received the Notice on August 09, 2008. The Agent for the Landlord stated that he does not know how this note was delivered to the Tenant. The Tenant stated that she did not receive this note until she received it as evidence for these proceedings.

The Landlord stated that in September of 2010 he posted a third Notice of Rent Increase at the rental unit, which indicated the rent would be increasing to \$314.00 effective January 01, 2011. The Tenant stated that she has never resided at the rental site; that it is rented to a third party; and she did not receive the Notice until she received it as evidence for these proceedings.

The Landlord and the Tenant agree that the Tenant has not paid any of the rent increases the Landlord contends were imposed on December 01, 2008 and January 01, 2011. The Landlord contends that the Tenant's rent is in arrears by the amount of those rent increases.

The Landlord and the Tenant agree that a Ten Day Notice to End Tenancy for Unpaid Rent Cause was served on the Tenant's son on June 07, 2012.

### Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord and this Tenant entered into a verbal tenancy agreement in which this Tenant agreed to pay monthly rent of \$277.00. I specifically note that I take no jurisdiction over money the Tenant agreed to pay to satisfy a debt her grandfather owed to the Landlord, as that debt is not part of the tenancy agreement between the Landlord and this Tenant.

On the basis of the undisputed evidence presented at the hearing, I find that the rent for this site was increased to \$287.00, effective December 01, 2006.

I find that the Landlord has submitted insufficient evidence to establish that the Tenant was served with the Notice of Rent Increase, which was intended to increase the rent to \$297.00, effective December 01, 2008. In reaching this conclusion I was influenced by the absence of evidence that corroborates the Landlord's testimony that he mailed the Notice to the Tenant on August 31, 2008 or that refutes the Tenant's testimony that she did not receive the Notice of Rent Increase until she was served with it as evidence for these proceedings.

In determining that the Landlord has submitted insufficient evidence to establish that the Tenant was served with the Notice of Rent Increase, I was heavily influenced by the note written by the Agent for the Landlord's mother, dated December 01, 2008, in which she informed the Tenant that the Tenant received the Notice on August 09, 2008. As this notation is in direct conflict with the testimony of the Landlord, it raises significant concerns about the accuracy of the Landlord's testimony regarding service.

In these circumstances the burden of proving the Tenant was served with the Notice of Rent Increase rests with the Landlord and, considering the discrepancy in the evidence submitted by the Landlord, I find that the Landlord has failed to meet the burden of proof.

As the Landlord has failed to establish that the Tenant received the Notice of Rent Increase, which was intended to increase the rent to \$297.00, effective December 01, 2008, I find that the rent remained at \$287.00.

I find that the Landlord has failed to establish that the Notice of Rent Increase, which was intended to increase the rent to \$314.00, effective January 01, 2011, was served in accordance to section 88 of the *Act*. Although I can find no reason to dispute the Landlord's testimony that the Notice was posted at the rental site in September of 2010, I find that there is no evidence that the Tenant was residing at the rental site or, given that she rents it out to a third party, that she uses the site as her business address.

As the Landlord has failed to establish that the Tenant received the Notice of Rent Increase, which was intended to increase the rent to \$314.00, effective January 01,

2011, I find that the rent remained at \$287.00.

As I have found that the Tenant was not obligated to pay increased rent of either \$297.00 or \$314.00, I find that the Tenant's rent is not currently in arrears. As previously stated, I find that any rent the Tenant agreed to pay in relation to money owed to the Landlord by her grandfather is not a subject of this tenancy and does not, therefore, constitute grounds to end this tenancy.

Section 40 of the *Act* authorizes a landlord to end a tenancy only if rent has not been paid when it is due. As the Landlord has failed to establish that the Tenant owed rent when the Notice to End Tenancy was served, I find that the Landlord has not established grounds to end the tenancy in accordance with section 40 of the *Act*.

### Conclusion

As the Tenant has failed to establish grounds to end the tenancy in accordance with section 40 of the *Act*, I grant the Tenant's application to set aside the Notice to End Tenancy for Unpaid Rent. I find that this tenancy shall continue until it is ended in accordance with the *Act*.

I find that the Tenant's application has merit and she is entitled to recover the cost of filing this Application for Dispute Resolution. I therefore authorize the Tenant to reduce one monthly rent payment by \$50.00 in full satisfaction of the cost of filing the Application for Dispute Resolution.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: July 04, 2012.

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Residential Tenancy Branch