



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR

### Introduction

This matter dealt with an application by the Tenant to cancel a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 29, 2012.

### Issue(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This tenancy started on December 1, 2000. Pad rent is \$826.00 due in advance on the first day of each month. On June 29, 2012, the Landlord served the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 29, 2012 by registered mail. The Tenant admitted that she received this Notice on July 3, 2012. The Notice to End Tenancy alleges that the Tenant had rent arrears of \$2,215.00 however the Landlord's agent admitted that \$125.00 of this amount represented late fees. The Tenant admitted that she had rent arrears as alleged in the amount of \$2,090.00 as of June 29, 2012.

The Parties agree that on February 1, 2012, the Tenant gave the Landlord a partial rent payment in the amount of \$418.00 with a letter stating that she hoped to pay the balance in a few weeks. The Parties also agree that on March 3, 2012, the Tenant gave the Landlord another partial rent payment with another letter stating that she was having financial difficulties and would be making partial payments until her manufactured home sold and at that time she would pay the arrears. The Landlord's agent said she never agreed to this arrangement but continued to accept the Tenant's partial payments for April, May and June 2012. On June 7, 2012, the Landlord's agent sent the Tenant a letter asking her to set up a meeting to discuss a payment schedule for the rent arrears and to make future rent payments in full. The Tenant did not set up a meeting but instead sent the Landlord's agent a letter the following day in which she restated her financial problems. The Landlord's agent said she then sent the Tenant

another letter with the 10 Day Notice asking her again to set up a meeting to discuss a payment schedule to pay the arrears but the Tenant did not respond.

The Tenant argued that she had an agreement with the Landlord's agent to make partial rent payments until such time as her manufactured home sold. The Tenant said the fact that the Landlord's agent accepted partial payments from her for 5 months is evidence of the agreement. The Landlord's agent argued that she did not agree that the Tenant could make partial rent payments and claimed that she accepted the payments because that's what she was given. The Tenant also argued that the Notice to End Tenancy should be cancelled because the incorrect site number was entered on it. The Tenant admitted that she was aware that this was an error and that the Notice applied to her.

### Analysis

Section 39(4) of the Act states that **within 5 days of receiving** a Notice to End Tenancy for Unpaid Rent or Utilities, a Tenant must either pay the overdue rent or if the amount is not owed, apply for dispute resolution to cancel the Notice.

I find that on June 29, 2012, the Tenant was served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 29, 2012 by registered mail. I find that the Tenant received this Notice on July 3, 2012. Although the Tenant applied to cancel the Notice on July 4, 2012, I find that there are no grounds for her application as she admitted that there are rent arrears as alleged that remain unpaid.

The Tenant argued that she had an agreement with the Landlord to make partial payments however I find that there is insufficient evidence of that. Instead I find that the Tenant started making partial payments in February 2012 on her own initiative and without seeking the prior permission of the Landlord. I find that thereafter the Tenant continued to make partial rent payments without the Landlord's prior consent. The Tenant argued that by accepting her partial payments, the Landlord accepted her offer to pay the rent arrears once her manufactured home sold. However in the absence of any reliable corroborating evidence such as a written agreement to that effect, I accept the Landlord's evidence that there was no consideration for such an agreement. In effect the Landlord claimed that it would make no sense to accept such an offer given that it had no knowledge of whether there was sufficient equity in the Tenant's home to discharge all of her debts and therefore it at no time agreed to allow the Tenant to wait until her home sold before seeking to recover the unpaid rent. Instead I find that this was solely the decision of the Tenant who was and is involved in a very difficult financial situation.

The Tenant also argued that the Notice to End Tenancy was defective because it cited the incorrect site number. Section 61 of the Act says *"If a Notice to End Tenancy does not comply with s. 45 of the Act [form and content], the director may amend the notice if satisfied that the person receiving the notice knew, or should have known, the*

*information that was omitted from the notice, and in the circumstances it is just and reasonable to do so.”* The Tenant admitted that she was aware that the 10 Day Notice to End Tenancy sent to her applied to her and that the Landlord had incorrectly put in the wrong site number. Consequently, I find that the Tenant knew that the Notice to End Tenancy had the wrong site number and accordingly, it is amended to correct the site number from “170” to “168.” As a result, I find that the Notice to End Tenancy is a valid and enforceable notice.

For all of the foregoing reasons, the Tenant’s application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated June 29, 2012 is dismissed without leave to reapply. The Landlord requested and I find pursuant to s. 48(1) of the Act that the Landlord is entitled to an Order of Possession to take effect 2 days after service of it on the Tenant.

### Conclusion

The Tenant’s application is dismissed without leave to reapply. The Landlord requested a Monetary Order for the unpaid rent, however the Act requires a party to make an application for dispute resolution for a Monetary Order and in the absence of such an application, the Landlord’s oral request was denied. An Order of Possession to take effect 2 days after service of it on the Tenant has been issued to the Landlord. A copy of the Order must be served on the Tenant and may be enforced in the Supreme 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 *Manufactured Home Park Tenancy Act*.

Dated: July 23, 2012.

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Residential Tenancy Branch