



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNL, FF

### Introduction

The tenant filed two Applications for Dispute Resolution to dispute a 1 Month Notice to End Tenancy for Cause and a 10 Day Notice to End Tenancy for Unpaid Rent. The Applications were joined and heard together. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

As this matter was heard by way of a teleconference call I performed a roll-call at the outset of the hearing. The landlord had submitted, in writing, prior to the hearing the names of the persons she wished to attend the hearing. Reading from the landlord's list I asked if former landlord (referred to by initials MZ) was present. The landlord responded by stating MZ's wife was present. As the hearing progressed I determined MZ had actually been present from the outset of the hearing. The landlord asked that MZ be permitted to testify as a witness. I permitted MZ to testify; however, I have assigned appropriate weight to his testimony considering his attendance at the hearing had not been disclosed previously. I also factored in the landlord's response during the roll-call in assessing her credibility.

At the beginning of the hearing I informed the parties of the hearing process including instructions not to interrupt the other party while they are giving testimony. The former landlord (referred to by initials AZ) did not comply with this request on two occasions. After making an outburst and interrupting the hearing for the second time I instructed AZ to leave. I am uncertain as to whether she left but I did not hear from her again.

Reference to "landlord" in this decision may include reference to a current and/or former landlord or landlords.

Issue(s) to be Decided

1. Is there a basis to cancel the 1 Month Notice to End Tenancy for Cause?
2. Is there a basis to cancel the 10 Day Notice for Unpaid Rent?

Background and Evidence

Since approximately 2005, after the tenant's grandfather passed away, the tenant has had control of the manufactured home and then ownership of the manufactured home. Since that time the tenant has paid monthly rent to the landlord. The tenant has never resided in the manufactured home and since 2005 has always rented the home to others under the Residential Tenancy Act without the landlord's written consent to do so. There is no written tenancy agreement between the tenant and the landlord.

Ownership of the manufactured home park changed effective May 1, 2013 and the tenants of the park were informed of the change by way of a letter issued by the former landlords on April 16, 2013. The letter reads, in part:

Dear Tenants,

We wish to advise that [name of the manufactured home park] has been sold effective May 1, 2013.

The new owners will be contacting you shortly as to how the pad rental will be collected and who the cheques will be made out to.

...

[signed by the former landlords]

One of the new owners of the park (referred to by initials AK) issued two Notices to end Tenancy to the tenant which are the subject of these Applications.

**1 Month Notice to End Tenancy for Cause**

On April 29, 2013 AK signed a 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) that identifies herself as the landlord and indicates the reason for ending the tenancy is because *the tenant has assigned or sublet the rental unit/site without landlord's written consent*. The Notice, which indicates the tenancy will end effective July 1, 2013 was sent to the tenant via registered mail.

When asked why AK issued a Notice to End Tenancy prior to the change in ownership of the park, AK responded by saying she was “helping out” the former landlords.

I heard disputed verbal testimony as to whether the tenant had the former landlord’s verbal consent to sublet the rental unit.

The former landlord’s acknowledged that they were aware of the tenant subletting the manufactured home and would approach the sub-tenants to get their signature on the written park rules. All the sub-tenants, except the most recent one, had signed the park rules and their tenancies were unremarkable.

It was undisputed that the most recent sub-tenancy was problematic and involved illegal activity by the sub-tenant. The tenant testified that the sub-tenancy has since ended and the manufactured home has been vacated as of the date of this hearing. The tenant testified that she has not yet re-rented the manufactured home and will await this decision before doing so. The landlord provided testimony that another resident of the park observed and reported to the landlord that someone appeared to be moving out of the manufactured home recently.

### **10 Day Notice to End Tenancy for Unpaid Rent**

On May 15, 2013 the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) to the tenant with a stated effective date of May 22, 2013. The 10 Day Notice indicates that the tenant failed to pay rent of \$299.00 that was due on “November 1, 2012 through May 2013.”

It was undisputed that the tenant has been paying \$297.00 to the landlord every month since November 1, 2012, the date of the last rent increase.

The landlord was of the position that the monthly rent increased to \$299.00 starting November 1, 2012 and pointed to four pages of a seven-page Notice of Rent Increase as evidence of that position. The former landlord testified that although only four pages were kept on file by the landlord and submitted as evidence for this proceeding, the tenant was served with all seven pages via registered mail.

The tenant testified that she received one page of the Notice of Rent Increase by registered mail and that this one page indicates the monthly rent was increasing to \$297.00 which she has paid. The tenant provided a copy of the first page of the Notice of Rent Increase she purportedly received. I noted that the writing on the Notices submitted by both parties is identical except for the amount of the new rent. On the

tenant's copy it appears as though somebody as gone over the amount a number of times to the point the original amount is obscured as looks like \$297.00.

The tenant stated that she was not contacted about a \$2.00 monthly shortfall before receiving the 10 Day Notice; however, she is willing to pay \$299.00 and the shortfall if it determined that the monthly rent is \$299.00.

Upon enquiry, the former landlord AZ testified that she "may" have left a message for the tenant on her answering machine about the shortfall in rent. The former landlord MZ testified that he mentioned the rent to the tenant, among other things, when he saw her at the park recently but that the tenant responded by saying she did not believe she owed any rent.

### Analysis

Upon consideration of all of the evidence provided to me, I provide the following findings and reasons which respect to each Application for Dispute Resolution.

#### **1 Month Notice to End Tenancy for Cause**

Section 45 of the Act provides for the form and content of a Notice to End Tenancy. Where a landlord wishes to end a tenancy, the landlord must serve the tenant with a Notice to End Tenancy that is in the approved form. Section 45 also requires that in order for a Notice to End Tenancy to be effective, the notice must be "signed by the landlord or tenant giving the notice".

In this case, the 1 Month Notice was signed by AK on April 29, 2013; however, I find AK was not a landlord when she signed it. I make this decision based upon the testimony provided to me as to the change in ownership of the park effective May 1, 2013, and upon consideration of the letter issued by the former landlords on April 16, 2013 which makes no mention that AK or the new owners would be acting as agents for the landlords prior to May 1, 2013.

Having found AK was not a landlord when the 1 Month Notice was signed by AK, I find the 1 Month Notice dated April 29, 2013 is not effective and I cancel it.

#### **10 Day Notice to End Tenancy for Unpaid Rent**

When a tenant fails to pay all or part of the rent due, the landlord may serve the tenant with a 10 Day Notice to End Tenancy in the approved form. A tenant who receives a 10 Day Notice has five days to pay the unpaid rent or file to dispute the Notice.

The purpose of serving a Notice to End Tenancy is to inform the tenant of their breach and the course of action being taken against them. Where the breach involves unpaid rent, the Act permits the tenant to rectify the breach by paying the unpaid rent within five days. Thus, the 10 Day Notice must reflect the amount of unpaid rent in order to correct the breach.

If I accept the landlord's position that the monthly rent is \$299.00 then I calculate that as of May 15, 2013 the tenant had failed to pay rent \$2.00 per month for seven months, or \$14.00. Therefore, the 10 Day Notice should have indicated the tenant failed to pay \$14.00.

In issuing a 10 Day Notice that indicates the tenant failed to pay "\$299.00" for November 1, 2012 through May 2013" I find the Notice is confusing and does not reflect or recognize the monthly payments of \$297.00. Thus, I find the 10 Day Notice fails to clearly communicate the tenant's breach or the actual amount she would need to pay in order to correct the breach. .

In light of the above, I find the 10 Day Notice is so flawed that it cannot be relied upon or found to be effective. Therefore, I cancel the Notice with the effect that this tenancy shall continue.

### **Other orders**

Under section 55 of the Act, the Director has the authority to do any of the following with respect to dispute resolution proceedings:

- (2) The director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this Act.
- (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this Act, including an order that a landlord or tenant comply with this Act, the regulations or a tenancy agreement.

Considering I have cancelled both Notices to End Tenancy based upon the flawed content of the Notice, I find it necessary and appropriate in these circumstances to issue the following orders to the parties with a view to avoiding future disputes and issuance of future Notices to End Tenancy.

*a) subletting*

Based upon the verbal testimony of both parties during the hearing, I accept that the manufactured home is currently vacant and is not sublet. While the manufactured home is vacant and/or not sublet I prohibit the landlord from issuing another 1 Month Notice to the tenant for subletting without permission. Rather, **I order both parties to comply with the Act and Regulations with respect to obtaining consent to sublet the manufactured home from now on.** For the parties' reference, subletting is provided in the following sections of the Act and Manufactured Home Tenancy Regulations:

Section 28 of the *Manufactured Home Park Tenancy Act*, and,  
Sections 42 through 52 of the *Manufactured Home Park Tenancy Regulation*

The Act and Regulations are available on the Residential Tenancy Branch website located at: [www.rto.gov.bc.ca](http://www.rto.gov.bc.ca) under the link "Legislation and Rules".

Further, Residential Tenancy Policy Guideline 19: *Assignment and Subletting* provides further information on the topic of subletting a manufactured home.

*b) Rent*

Based on the balance of probabilities and upon review of the Notices of Rent Increase presented by each of the parties, **I find the monthly rent is \$299.00 and I order it set at that amount. The tenant must pay monthly rent of \$299.00 starting July 1, 2013** until such time the rent changes in accordance with the Act. **The tenant is further ordered to pay the landlord the shortfall of rent for the months of November 2012 through June 2013 in the sum of \$16.00 no later than July 1, 2013.** Failure to pay this may result in the landlord issuing a 10 Day Notice after July 1, 2013.

**Filing fees**

The tenant paid a total of \$100.00 for these Applications for Dispute Resolution. I order the parties to share in the cost of these disputes. Therefore, I authorize the tenant to deduct \$50.00 from a future month's rent in satisfaction of this award.

Conclusion

The Notices to End Tenancy issued April 29, 2013 and May 15, 2013 and cancelled and the tenancy continues. I have issued other orders with this decision with respect to subletting and the amount of the monthly rent payable to the landlord from this point

forward. I have also ordered the parties to share in the cost of these disputes and, as a result, the tenant is authorized to deduct \$50.00 from a subsequent month's rent.

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: June 07, 2013

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Residential Tenancy Branch

