



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC OLC AAT PSF OPR FF

### Introduction

This hearing dealt with two applications. The tenant applied to cancel a Notice to End Tenancy for Cause, and for orders compelling the landlord to comply with the Act, Regulation, or tenancy agreement; to provide services or facilities required by law; to allow access to and from the rental unit for the tenant; and to recover the filing fee from the landlord. The landlords applied to end the tenancy because the tenant has not paid rent or utilities and to recover their filing fee.

The landlords were represented at the hearing by their daughter, who is the property manager. Both the landlords' representative and the tenant gave affirmed evidence.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause be cancelled?  
Is the tenant entitled to the various other relief claimed?

### Background and Evidence

The parties agreed that they entered into a tenancy agreement in about November 2009, in which the tenant would move his motor home into the landlords' barn and would pay \$300.00 per month in rent. The tenancy agreement was not put in writing and the parties now disagree about some of the terms of the agreement.

The landlords served a Notice to End Tenancy for Cause (the "Notice") on the tenant on December 8, 2013 by posting the Notice on the door of the barn. The Notice specified the cause as "Tenant is repeatedly late paying rent" and the move out date as January 31, 2014. Section 83 of the Act provides that because the Notice was served by posting it on the tenant's door, the tenant is deemed to have received the Notice three days

later on December 11, 2013. The landlords also sent the tenant a photo of the Notice by text message.

The landlord's representative gave evidence that the rent was never paid on time. She said the tenant usually paid rent in cash to her mother. Sometimes her mother would go to the property to collect rent and at other times the tenant would bring the rent to the landlords' home, about a 10 minute drive away. She said that the tenant did not pay rent for September and October 2013 until November 11, 2013. He then did not pay rent for November 2013 until she requested he pay by bank transfer. He did so on November 25, 2013. She said the December 2013 rent was paid in December 2013, however the January 2014 rent had not been paid at the time of the hearing.

Asked about the tenant's pattern of rent payment in 2010, 2011, and 2012, the landlord's representative said that the tenant did not pay monthly. Asked what action the landlords would take if rent was not paid on the first of the month, the landlord's representative said they would not "hound" him. She said that if a couple of months went by, the landlords would approach the tenant and ask him to pay. She said that because the tenant was a family friend, the arrangements were "a lot looser" than they would have been otherwise.

The landlords' representative's evidence was that her mother did not attend the property to collect rent promptly on the first of the month. When she did go to the property, if the tenant was not there, she would try to call him or get her husband to try to call him. If the tenant was out of town, they "wouldn't hound him".

The tenant's evidence was that payment of rent was "all over the place". He said that he normally paid the rent to the male landlord, and it was "never an issue" whether rent was paid on the first of the month. He said that the first time the landlords complained about the rent being late was in November 2013.

The tenant said that on one occasion the male landlord went to India for two and a half months and the tenant did not pay rent until he returned. He said it "was very loose". Also, when he first entered into the tenancy in November 2009, he did not pay rent until January 2010 because the male landlord was away.

The parties disagree about whether the tenant's rent includes the cost of hydro. The landlord's position is that the tenant agreed to pay the cost of hydro in addition to his rent. The tenant says that the payment of utilities was not discussed at the time of the agreement.

The landlord's representative states that the hydro account for the barn was in the landlord's name from November 2009 until about March 2010 when another tenant starting using the barn and put the hydro account in his name. She said that during that period, the tenant paid an amount for hydro to the landlords. She said the tenant then paid a portion of the hydro directly to the other tenant until April 2013 when the other tenant moved out and the hydro account was placed into the landlord's name again.

The tenant denies paying hydro at any time during his tenancy, either to the landlord directly or to the other tenant of the barn. He says that he paid an amount to the other tenant for cable and internet, but not hydro. He says that the first time he was asked by the landlords to pay hydro was in November 2013.

The parties also disagree about whether the tenancy agreement allowed the tenant to park his vehicles, a car and a motorcycle, in the barn. The landlord's representative states that the tenancy agreement did not include a term allowing for parking vehicles in addition to the motor home in the barn. The tenant states that he parked his vehicles in the barn from the beginning of his tenancy and the landlord did not protest. The tenant states that the landlords have recently parked their van in such a way that he cannot drive his vehicles in and out of the barn. He seeks an order that the landlord not block his access to drive his vehicles in and out of the barn.

### Analysis

The parties did not put their tenancy agreement in writing. Although they agreed that rent would be \$300.00 per month, they did not specify what day of the month rent would be due. Consequently, the tenant is entitled to pay his rent for the month on any day of that month.

The parties did not agree on specific arrangements for the payment of rent. Instead, they relied for a period of four years on a casual arrangement whereby rent was paid when it was convenient to both parties. For that reason, the landlords cannot now rely on the late payment of rent as a cause to end the tenancy. I therefore order that the Notice to End Tenancy for Cause be cancelled. I note, however, that the landlords have now indicated that they wish to be paid the rent on time. The tenant has therefore been put on notice that his rent for the month is payable by the last day of the month.

I found both of the parties to be credible witnesses. However, they gave contradicting evidence regarding whether the tenant had ever paid hydro in relation to his tenancy. The landlord has the burden of proof to show that it was a term of the tenancy agreement that the tenant would pay for hydro. There was no evidence presented that

makes it more probable than not that the tenant paid hydro. Also, the tenant is in a better position to know whether he paid hydro than is the landlord's representative. I therefore find that it is not a term of the tenancy agreement that the tenant pay hydro.

The parties also gave contradicting evidence regarding whether parking of the tenant's car and motorcycle in the barn was permitted under the tenancy agreement. Given that the tenant parked his vehicles in the barn for over four years without protest by the landlord, I find that it is more likely than not that it is a term of the tenancy agreement that the tenant may park his vehicles in the area of the barn that he customarily uses for that purpose. I therefore order the landlords to not park in such a way that impedes the tenant's ability to drive his vehicles to and from his parking area of the barn.

Since the Notice to End Tenancy has been cancelled, the tenant is entitled to recover his filing fee of \$50.00 from the landlord. I authorize the tenant to deduct this amount from his rent.

### Conclusion

The tenant's application is granted and the Notice to End Tenancy for Cause is therefore cancelled. The tenancy will continue with the provisions of the *Manufactured Home Park Tenancy Act*. The landlords are ordered to not park in such a way as to impede the tenant's ability to drive his vehicles to and from his parking area in the barn. The landlords' application is dismissed.

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: January 09, 2014

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Residential Tenancy Branch