



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STONECLIFF PROPERTIES LTD./STONECLIFF PARKS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, FF

### Introduction

The tenant applies to cancel a ten day Notice to End Tenancy posted to the door of the manufactured home on the site in question on March 7, 2014.

The landlords' representative argues that the tenant is not the true tenant of the site and that a payment made subsequent to the Notice was not accepted as rent but only as "use and occupation" money.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the ten day Notice a valid Notice? Is the applicant the tenant? Has the Notice been cancelled by payment?

### Background and Evidence

The manufactured home site is located in a park of about thirty four sites in a town near Prince George. The landlords' appear to be the two corporate entities listed as "landlord" on the ten day Notice to End Tenancy. The respondent Ms. V.B. appears to be a principal of one or both those corporations and is not a landlord or a proper respondent party.

The landlords' representative Mr. M. indicates that the landlords purchased the park from a Mr. K. on November 12, 2013.

The landlords have no record of the applicant Mr. T. as a tenant. Extraordinarily, the landlords have no record of any tenant in the park. Mr. M. indicates that they received no records at all from the vendor. The landlords started collecting rent at the park in January 2014, determining what the rent was by the amount people tendered as rent. They have assumed that the registered owner of each manufactured home in the park is the lawful tenant. The landlords have conducted a search of the manufactured home on site 39 and have submitted the search result showing the owner is a Mr. O. of an address in Prince George and that the home is recorded as being located at the dispute address.

The applicant Mr. T. testified that he purchased his manufactured home in November 2013 from a Ms. K.A. who was then residing in the home and that he took over her tenancy of site 39. He says he paid November and December rent to Mr. K. He says he paid \$220.00 for January rent to Mr. R.B., one of the principles of at least one of the landlords, and received a receipt with his name on it.

It is not clear why the applicant did not pay February or March rent, but he says that Mr. R.B. told him that rent would only be accepted from “registered owners.” On March 7<sup>th</sup> Mr. R.B. for the landlords issued the ten day Notice in question, claiming a failure to pay rent of \$500.80. On the same day the Notice was sent by registered mail to Mr. O. at his address in Prince George and a copy was attached to a door to the manufactured home itself.

On March 15<sup>th</sup> the applicant Mr. T. tendered \$500.80 to the landlords in payment of the amount demanded in the ten day Notice. The landlords’ representative accepted the money but issued a receipt marked “for use and occupation.”

The tenant says that yesterday he acquired a transfer form signed by the registered owner Mr. O. transferring the manufactured home to him. He has not provided the landlords with a copy yet. Mr. M. for the landlords indicates that the transfer does not resolve the dispute and he requests an order of possession.

### Analysis

While the registered ownership of a manufactured home may be some evidence about who a tenant is, ultimately, the tenant is the person who has the agreement with the landlord regarding possession of the manufactured home site (see the definition of “tenancy agreement” in the *Manufactured Home Park Tenancy Act* (the “Act”)).

In this case, the only evidence on that point is that the applicant Mr. T. made an agreement with the then current tenant Ms. K.A. and Mr. K. for possession of the site back in November. There is no evidence but that Ms. K.A. was the current tenant and that Mr. K. was lawfully entitled to convey possession of the site to the applicant Mr. T. at that time. Regardless of who might be the currently recorded registered owner of the manufactured home on the site, I find that the applicant Mr. T. is the tenant of site 39 in the park.

It is arguable that the ten day Notice is invalid for the simple reason that it does not name the tenant Mr. T. but in the confused circumstances of this case I would not cancel the Notice for that reason alone.

The \$500.80 amount claimed in the Notice includes \$70.00 in "late fees." Obviously, a landlord cannot charge a fixed amount as a late fee unless there is an agreement wherein the tenant agrees to such a fixed charge. There is no such agreement here. In any event a "late fee" is not "rent" and, under s.39 of the *Act* a ten day Notice may only be given for unpaid rent and a tenant is only obliged to pay overdue rent. By demanding that the tenant pay more than the overdue rent to avoid the Notice, the Notice is fatally flawed and cannot stand.

In any event, the tenant Mr. T. paid the amount demanded in the Notice on March 15<sup>th</sup> and thereby invalidated the Notice. In accordance with s. 83 of the *Act*, a document sent by mail is deemed received five days later. Thus the ten day Notice sent by registered mail to Mr. O., the then current registered owner was deemed received on March 12<sup>th</sup>. A document served by posting to a door is deemed received three days later. Thus the copy of the ten day Notice attached to the tenant's door was deemed received March 10<sup>th</sup>.

Section 39(4) of the *Act* provides:

- (4) Within 5 days after receiving a notice under this section, the tenant may
  - (a) pay the overdue rent, in which case the notice has no effect, or
  - (b) dispute the notice by making an application for dispute resolution.

The money was paid within the five day period after receipt of the Notice and so the Notice at issue in this proceeding "has no effect." I cannot see it to be relevant, from a landlord's perspective, whether the lawful tenant pays the overdue rent in person or by an agent or, indeed, whether a total stranger attends and pays the rent for that tenancy.

The tenant and Mr. M. disagreed about what the rent actually is. As it was not an issued fairly raised in the application I decline to make any decision about what the rent is. I would suggest that if Mr. K or his receipts for the November and December 2013 rent can be found, they would be persuasive evidence of the rent agreement reached between the tenant and Mr. K. (and binding on the present owners as successors in title).

### Conclusion

The tenant's application is allowed. The ten day Notice to End Tenancy dated March 7, 2014 is cancelled. The tenant is entitled to recover the \$50.00 filing fee for this application. I authorize him to reduce his next rent due by \$50.00 in full satisfaction of the fee.

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: April 03, 2014

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Residential Tenancy Branch

