



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding STONECLIFF PROPERTIES  
and [tenant name suppressed to protect privacy]

## **Decision**

### **Dispute Codes:**

CNR, FF

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant seeking to cancel a Ten Day Notice to End Tenancy for Unpaid Rent and to establish that the tenant's rent payment was not late for the purpose of the tenant's record of payments.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

### **Issue(s) to be Decided**

Was the tenant's payment of rent late, warranting the issuing of a 10-Day Notice to End Tenancy for Unpaid Rent?

Was the 10-Day Notice to End Tenancy for Unpaid Rent cancelled by payment of rent within 5 days of the Notice?

### **Background and evidence**

The landlord testified that the tenant is required to pay the rent by mailing cheques to an off-site office of the landlord located in another community..

The landlord testified that they did not receive the tenant's June rent cheque at the off-site mail location by June 2, 2014. The landlord testified that they issued a 10-Day Notice to End Tenancy for Unpaid Rent to the tenant. The landlord testified that, once they retrieved their registered mail, it was discovered that the tenant had sent the rent payment in the form of a cheque to the 'landlord's off-site location.

A letter from the landlord to the Residential Tenancy Branch dated July 10, 2014 is in evidence and states the following:

*“The landlord acknowledges receipt of payment within the time required under the subject 10 Day Notice and accordingly, consents to the cancellation of the 10 Day Notice dated June 2, 2014.”*

The tenant testified that they had paid the rent by sending 3 post-dated cheques to the landlord by registered mail on May 27, 2014. The tenant pointed out that the landlord apparently delayed retrieving the mail and postponed depositing his cheque for June 2014.

The tenant testified that, when he suddenly received a 10-Day Notice to End Tenancy for Unpaid Rent dated June 2, 2014, he immediately made an application for dispute resolution on the same day, as he knew that his rent was paid and believed that it was actually paid on time.

The tenant testified that he does not agree with the landlord's claim that the 10 Day Notice was cancelled *after* it was issued. The tenant pointed out that cancelling the Notice by payment within 5 days in accordance with the Act would mean that the rent was paid late. The tenant's position is that there was no late payment of rent as the landlord would actually have had the tenant's mailed cheques in hand on or before June 2, 2014.

The tenant stated that the reason he felt it necessary to send the rent cheque by *registered* mail in the first place is because he needed to have an independent record of the mailing date of his rent payment to ensure that his tenancy is not jeopardized by the landlord's undependable administrative practices.

The landlord argued that the tenant has neglect to submit any evidence for this hearing to verify exactly when the registered mail was sent and therefore has failed to prove that the rent was paid on time.

However, the landlord also failed to submit any evidence to show that the payment was late. Nothing was in evidence to show that the tenant's mail was postmarked after May 27, 2014 nor records that could verify precisely when the tenant's cheques were officially received.

## Analysis

Section 20 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

When a tenant fails to comply with section 20, then section 39 of the Act permits the landlord to end the tenancy by issuing a Ten-Day Notice effective on a date that is not earlier than 10 days after the date the tenant receives it.

I find that the landlord bears the burden of proof to justify the 10-Day Notice to End Tenancy for Unpaid Rent and the landlord has not submitted any evidence to support their claim that the rent was not received on time.

I accept the tenant's testimony that the tenant mailed the 3 rent cheques by registered mail on May 27, 2014.

I note that section 83(a) of the Act provides that a document is deemed to have been served, if given or served by mail, on the 5th day after it is mailed. I find that the mail sent by the tenant is deemed to have been served on June 1, 2014 and this would be considered payment of the rent on time.

I also accept the tenant's testimony that the landlord may have delayed in retrieving the mail, or in the alternative, that the landlord wrongfully issued the 10-Day Notice to End Tenancy for Unpaid Rent on June 2, 2014 by claiming the rent was not paid on time before checking their records..

In any case, I find that the service provisions of the Manufactured Home Park Tenancy Act under section 81, permit the service of any documents in the following manner:

**(a) by leaving a copy with the person;**

**(b) if the person is a landlord, by leaving a copy with an agent of the landlord;**

**(c) by sending a copy by ordinary mail or registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;**

**(d) if the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;**

**(e) by leaving a copy at the person's residence with an adult who apparently resides with the person;**

**(f) by leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;**

**(g) by attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;**

(h) by transmitting a copy to a fax number provided as an address for service by the person to be served;

**(i) as ordered by the director under section 64 (1) [*director's orders: delivery and service of documents*];**

(j) by any other means of service prescribed in the regulations.

(My emphasis)

I find that the service of documents would include rent payment cheques. In this instance, I find that the landlord has imposed an onerous and costly process on the tenant to ensure that their rent is paid directly to an off-site location and duly monitored. I find that this limits the ability of the tenant to confirm or prove that their monthly rent payment has been received, except through registered mail.

I find that this process causes a situation where a tenant may be held accountable for delays or loss of mail attributable to Canada Post or even administrative delays and oversights caused by the landlord.

Because there is a likelihood that situations of this nature may have occurred in the past, creating a record of late payments for the tenant, I find it necessary to make a finding that any past late payments on the tenant's ledger to date be waived and expunged from the tenant's record.

Going forward, I find that, given the service provisions of the Act, the tenant is permitted to submit payment by cheque in the following ways:

- to an agent of the landlord, if one exists on site in the manufactured home park,
- by ordinary mail or registered mail to the address at which the person or company carries on business as a landlord, including an administrative office located on site in the manufactured home park,
- by leaving a copy in a mail box or mail slot for the address at which the person or company carries on business as a landlord, including an administrative office located on site in the manufactured home park,
- by attaching a copy to a door or other conspicuous place at the address at which the person or company carries on business as a landlord , including an administrative office located on site in the manufactured home park.

I find that, if it is the landlord's preference that the payments be sent to a remote off-site business location, then the landlord is at liberty to have their agent forward the tenant's cheques from the on-site park office to the landlord's preferred off-site location.

I find that the parties may also, by mutual consent, agree to another form of payment, such as the submission of post-dated cheques, email transfers, direct deposit or other payment method that they both find convenient..

In this instance I find that the tenant was not in arrears for rent at the time the landlord's 10-Day Notice was issued and served on June 2, 2014. I find that the Notice was never valid nor enforceable and therefore it need not be cancelled because, as the tenant pointed out, it was never in force in the first place.

Having found that the 10-Day Notice to End Tenancy for Unpaid Rent was of no force nor effect, I order that the tenant is entitled to be reimbursed the \$50.00 cost of this application and the tenant may reduce the next rent payment due by this amount.

### **Conclusion**

The tenant is successful in the application and the 10-Day Notice to End Tenancy for Unpaid Rent is not valid on its fact as it was issued and served while the tenant was not in arrears.

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

Dated: July 29, 2014

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Residential Tenancy Branch

