



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Vista Village Trailer Park Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes:**

MNDC; MNR; FF; O

### **Introduction**

This Hearing was convened on May 6, 2015. It was originally scheduled to consider cross applications; however, I severed the Tenant's Application for Dispute Resolution and adjourned both matters to be heard separately. An Interim Decision was issued on May 15, 2015, which should be read in conjunction with this Decision.

This is the reconvened Hearing for the Landlord's Application for Dispute Resolution seeking compensation for damage or loss under the Act, regulation or tenancy agreement; a Monetary Order for unpaid rent; "other" Orders; and to recover the cost of the filing fee from the Tenant.

It is important to note that the Landlord provided additional documentary evidence to the Branch on June 26, 2015. I made no Orders that the Landlord may file additional documentary evidence after the Hearing commenced on May 6, 2015, and therefore pursuant to the provisions of Rule 3.19 of the Rules of Procedure, I have not considered this additional documentary evidence.

### **Issues to be Decided**

1. Is the Landlord entitled to compensation for unpaid rent due to the Tenants' breach of the Act, regulation or tenancy agreement? If so, is the Landlord entitled to interest on the unpaid rent?
2. Is the Landlord entitled to an Order that the Tenant comply with the tenancy agreement?

3. Is the Landlord entitled to an Order that current rent is \$393.00, to compensate for rent increases based on \$250.00 a month rent instead of \$300.00?

### **Background and Evidence**

#### **The Landlord's evidence:**

This tenancy began in 2000. The Landlord's agent stated that her ex-husband, who used to manage the manufactured home park, was mismanaging the park and was fired in 2004. She testified that she and another person were co-managing the park from 2004 until 2006. The Landlord's agent testified that her ex-husband was unwilling to give her copies of the existing tenancy agreements. In 2006, further to a Court Order, the Landlord's agent took over management of the manufactured home park.

In 2004, the Landlord's agent's co-manager asked each of the tenants in the park to provide a copy of their tenancy agreement. Some of the tenants, including the Tenant, stated that they did not have copies of their tenancy agreements. She testified that "on the honour system", she accepted the Tenant's word that rent was \$250.00. Subsequent rent increases were based on rent being \$250.00 in 2004.

The Tenant wished to assign her tenancy agreement and therefore was required to attach a copy of her tenancy agreement to her application to assign the tenancy. The Landlord's agent testified that in January, 2015, the Tenant provided the Landlord with a copy of a tenancy agreement dated December 14, 2003, between the Tenant and the corporate Landlord. A copy of this agreement was provided in evidence. The December 14<sup>th</sup> tenancy agreement indicates that it is for two lots, E-10 and E-8, and that rent is \$300.00, commencing January 1, 2004. The Landlord was concerned because the tenancy agreement was altered with respect to the lot number(s) and the amount of rent. The Landlord stated that it is undisputed that the original tenancy agreement from 2000 was for site E10 only. He stated that if such a written tenancy agreement exists it cannot be located.

The Landlord's agent testified that in March, 2015, "the Ministry" faxed a copy of the unaltered tenancy agreement to the Landlord's lawyer. A copy of this tenancy agreement was also provided in evidence, which indicates that monthly rent is \$300.00 for site E10 only. The Landlord submitted that this unaltered agreement dated December 14, 2003, is a valid and binding agreement. The Landlord submitted that there is no "sun set clause" in the agreement and that the parties signed the agreement on mutually agreed upon terms.

The Landlord provided a spreadsheet in evidence which outlines the amounts the Landlord says the Tenant owes for unpaid rent and interest calculations (based on Court Order Interest). The Landlord seeks a monetary award in the amount of \$8,238.00 for unpaid rent and \$607.29 for interest (compounded every 6 months), totaling \$8,845.29.

Tenant's evidence:

The Tenant stated that she that she didn't give the Landlord's agent a copy of the 2003 tenancy agreement in 2004 because it wasn't the original 2000 agreement, so she "didn't think it would apply".

The Tenant testified that in December, 2003, she and the former manager reached an agreement that she could rent the site adjacent to her site, which was a vacant lot. She stated that they agreed that rent would go up from \$250.00 per month to \$300.00 per month because of the adjacent site. The Tenant stated that they forgot to put the additional site number on the agreement and that she didn't notice until after it was signed. The Tenant acknowledged altering the tenancy agreement, but stated that she had no intent to forge the document and did not realize that it might invalidate the contract. The Tenant wanted the new manager to see that she was paying \$300.00 for two sites and she stated that she made alterations on her own copy for her own benefit.

The Tenant stated that she could not build on the adjacent site, so she gave it up and started paying \$250.00 again. She stated that she has been renting and paying for site E10 only since May, 2004.

The Tenant submitted that the Act does not require a tenancy agreement to be in writing. She stated that the rent was "temporarily increased" to \$300.00 from \$250.00 in 2004, but reverted to \$250.00 when she gave up the adjacent site.

The Tenant submitted that it is not a tenant's responsibility to maintain a landlord's records. She submitted that the Landlord should be estopped from claiming for unpaid rent because it was well established that rent was \$250.00. The Tenant testified that she did not know she could get a copy of the December, 2003, tenancy agreement from the Ministry.

**Analysis**

Section 6(1) of the Act provides:

**6** (1) The rights, obligations and prohibitions established under this Act are enforceable between a landlord and tenant under a tenancy agreement.

The Act defines a "tenancy agreement" as "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a manufactured home site, use of common areas and services and facilities". In this case, I find that there is a written tenancy agreement between the parties, dated December 14, 2003.

Section 14 of the Act provides, in part:

**14** (2) A tenancy agreement may be amended to add, remove or change a term, other than a standard term, only if both the landlord and tenant agree to the amendment.

(3) The requirement for agreement under subsection (2) does not apply to any of the following:

(a) a rent increase in accordance with Part 4 of this Act;

(b) a withdrawal of, or a restriction on, a service or facility in accordance with section 21 *[terminating or restricting services or facilities]*;

(c) park rules established in accordance with section 32 *[park rules]*;

(d) a term in respect of which a landlord or tenant has obtained an order of the director that the agreement of the other is not required.

I find that the tenancy agreement dated December 14, 2003, is a valid tenancy agreement which was not amended by the Landlord and the Tenant. I find that the unaltered tenancy agreement dated December 14, 2003, is still in effect. The Tenant did not attempt to have the tenancy agreement amended by the former manager or the Landlord.

I find that the Tenant did not comply with Section 20 of the Act regarding payment of rent when it is due and that the Landlord is entitled to a monetary award for unpaid rent from June 1, 2004, to and including April 1, 2015.

I dismiss the Landlord's claim for interest on the outstanding rent. The Act does not provide for Court Order interest on outstanding rent. The regulations allow for late fees if the tenancy agreement provides for late fees; however, the Landlord did not seek late fees in its Application for Dispute Resolution, and there is no provision in the tenancy agreement for such late fees.

I also dismiss the Landlord's application for an order that current rent is \$393.00 to compensate for rent increases based on \$250.00 a month rent instead of \$300.00. The Landlord is at liberty to file an application for an additional rent increase pursuant to the provisions of Section 36(3) of the Act.

Pursuant to the provisions of Section 60 of the Act, I find that the Landlord has established a monetary award, calculated as follows:

Unpaid rent for June – December, 2004 (6 months x \$50.00)	\$350.00
Unpaid rent for 2005 – 2014 (120 months x \$50.00)	\$6,000.00
Unpaid rent for January – July, 2015 (7 months x \$50.00)	<u>\$350.00</u>
TOTAL	<b>\$6,700.00</b>

The Landlord's spreadsheet indicates that the Tenant paid rent in the amount of \$314.00 commencing January 1, 2015. For clarification, I find that rent effective August 1, 2015, is \$364.00 (\$314.00 + \$50.00), and that the Landlord may not impose a rent increase under Section 35 of the Act until at least January 1, 2016. As mentioned earlier in this Decision, the Landlord is at liberty to file an application for dispute resolution seeking a greater amount than calculated under the regulation, pursuant to the provisions of Section 36 of the Act.

The Landlord has been partially successful in its application and I find that it is entitled to recover the **\$100.00** filing fee from the Tenant.

### **Conclusion**

The Landlord is hereby provided with a Monetary Order in the amount of **\$6,800.00** for service upon the Tenant. This Order may be filed in the Provincial Court of British Columbia (Small Claims Court) and enforced as an Order of that Court.

Effective August 1, 2015, monthly rent is **\$364.00**.

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 27, 2015

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Residential Tenancy Branch

