



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, DRI, OLC, O, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and to dispute an additional rent increase.

The hearing was conducted via teleconference and was attended by the tenant and the landlord.

I note that Section 48 of the *Manufactured Home Park Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

I noted during the hearing that part of the landlord's evidence was missing from what was submitted to the Residential Tenancy Branch – specifically every other page. I ordered the landlord to re-submit all pages of his evidence to me for review. The tenant confirmed that she had received all relevant pages. The landlord did submit his evidence by fax.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 10 Day Notice to End Tenancy for Unpaid Rent; to dispute an additional rent increase and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 21, 34, 39, 60, and 65 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 48(1) of the *Act*.

### Background and Evidence

The parties agreed the tenancy began on October 3, 2005 on a month to month basis for a current monthly rental of \$397.00 due on the 1<sup>st</sup> of each month.

Both parties submitted a copy of a 10 Day Notice to End Tenancy for Cause issued on July 2, 2016 with an effective vacancy date of July 15, 2016 due to \$477.65 payable for the month of July 2016. During the hearing both parties confirmed the copies submitted were authentic and that they did not have the landlord's signature.

Both of the parties submitted copies of 2 different Notice of Rent Increase – Manufactured Home Site forms. The one submitted by the tenant was issued by the landlord on June 1, 2016. The Notice increased the rent from \$397.00 to \$410.40 to be effective December 1, 2016.

On the front page the landlord had also written that effective July 1, 2016 the tenant would be required to pay water and sewer in addition to rent. The notation included an explanation breaking down the additional costs to be of \$40.00 per month for water and \$10.00 per month for sewer.

I note that the calculations documented on the form itself used to determine the new rent amount of \$410.40 did not include the passing through of increased water costs for the landlord.

The landlord explained when he obtained additional advice he recalculated how much the rent increase should be including the pass through of increased water costs. As such, he provided the tenant with a new Notice of Rent Increase – Manufactured Home Site signed by him on July 27, 2016 which provides notice that the increase effective December 1, 2016 will be from \$397.00 to \$413.94.

### Analysis

Section 39 of the Act states a landlord may end a tenancy if rent is unpaid on any day after the day it is due, by giving notice to end the tenancy on a date that is not earlier than 10 days after the date the tenant receives the notice. A notice under this section must comply with Section 45 of the Act.

Section 45 of the Act stipulates that in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) Be signed and dated by the landlord or tenant giving the notice,
- (b) Give the address of the manufactured home site,
- (c) State the effective date of the notice,
- (d) Except for a notice under section 38 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) When given by a landlord, be in the approved form.

As confirmed by both parties during the hearing, I find that the 10 Day Notice to End Tenancy for Unpaid Rent was unsigned by the landlord. As such, I find the Notice to

End Tenancy does not comply with the requirements set forth in Section 45. As a result, I order the 10 Day Notice to End Tenancy for Unpaid Rent is of no force or effect.

Section 21 of the *Act* states a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

The section goes on to state that the landlord may restrict or terminate a service or facility that is not essential or a material term if the landlord gives 30 days' written notice of the termination or restriction, and reduces the rent in an amount that is equivalent to the reduction in the value of the tenancy agreement resulting from the termination or restriction of the service or facility.

Section 36 of the *Act* states that a landlord may impose a rent increase only up to the amount calculated in accordance with the regulations, ordered by the director on an application by the landlord for an additional rent increase, or agreed to by the tenant in writing.

Section 32 of the Manufactured Home Park Tenancy Regulation stipulates that for the purposes of section 36 (1) of the *Act*, a landlord may impose a rent increase that is no greater than the amount calculated as follows: Inflation Rate + 2% + Proportional Amount. Proportional Amount is defined in the same section of the Regulation to mean the sum of the change in local government levies and the change in utility fees divided by the number of manufactured home sites in the landlord's manufactured home park.

From the testimony of both parties I find that the Notice of Rent Increase issued by the landlord on June 1, 2016 included an additional rent increase of \$50.00 for services and facilities that had previously been provided without charge for the 10 years of the tenancy since the current landlord has owned the park over and above the annual allowable amount.

I find that, in fact, the landlord was attempting to change the terms of the verbal tenancy agreement to exclude the inclusion of water and sewer as services included in the tenancy agreement. While Section 21 of the *Act* does allow the landlord to terminate a service if the landlord reduces the rent by an amount equivalent to the cost of the service it does not allow the landlord do so if the service is essential for the tenant's use of the site.

In the case before me I find the landlord cannot terminate the provision of these services to the tenants because I find that they are essential to the use of the site. As such, I order the landlord must continue to provide those services as included in the cost of rent.

I also find that the Notice of Rent Increase issued on June 1, 2016 imposed an additional rent increase that is not allowed under the Regulation. I therefore find the June 1, 2016 Notice of Rent Increase is of no force or effect.

However, I find the Notice of Rent Increase issued on July 27, 2016 by the landlord does comply with the requirements set forth in Section 32 of the Regulation and does not include the additional rent increase for terminated services. I find that the landlord is allowed to pass through the increased water and sewer costs where applicable as these services are included in the rent for this tenancy.

### Conclusion

Based on the above,

- I order the 10 Day Notice to End Tenancy for Unpaid Rent issued by the landlord on July 2, 2016 is cancelled;
- I order the Notice of Rent Increase – Manufactured Home Site issued by the landlord on June 1, 2016 is cancelled;
- I order the Notice of Rent Increase – Manufactured Home Site issued by the landlord on July 27, 2016 is effective as of December 1, 2016. For clarity, I order that rent will increase from \$397.00 to \$413.94 on December 1, 2016.

As the tenant was successful I order the tenant is entitled to recover the cost of her filing fee for this Application for Dispute Resolution in the amount of \$100.00, pursuant to Section 65 of the *Act*. I order the tenant may deduct this amount from a future rent payment in accordance with Section 65.

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: August 26, 2016

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Residential Tenancy Branch