



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Stonecliff Properties Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MND MNR MNDC OLC FF

### Introduction

This hearing dealt with monetary claims by the tenant and the landlord.

The hearing first convened on September 26, 2016. On that date, the tenant, the tenant's agent and three agents for the landlord called in to the teleconference hearing. Issues arose regarding service of evidence, and I determined that it was appropriate to adjourn the hearing.

The hearing reconvened on November 25, 2016. On that date, all of the participants who participated on September 26, 2016 called in again, as well as the second tenant, who was named as a respondent in the landlord's application.

In the reconvened hearing the landlord requested an amendment to reduce their monetary claim. The tenant argued that the landlord submitted new evidence contrary to my orders in my interim decision, and it should not be admitted. The landlord stated that the only difference in the evidence was a reduced claim and the provision of evidence that the tenant previously demanded be produced. In the reconvened hearing the tenant referred to and relied on the landlord's new evidence to support the tenant's position. I found that the new evidence outlining a reduction in the landlord's claim would not prejudice the tenant, and I admitted the evidence and amended the landlord's application to reflect a reduced claim of \$22,352.12.

The reconvened hearing lasted approximately 113 minutes. The parties were given full opportunity to give affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The dispute between the parties involves the tenant's occupation of a manufactured home park site. The tenant rented a site in the manufactured home park and had no written tenancy agreement with the original landlord. The new landlord purchased the park and took over as landlord in late 2013. The tenant's first payment to the new landlord was in December 2013.

On August 20, 2014 the landlord served the tenant with a 12-month notice to end tenancy. The effective date of the notice was August 31, 2015. The tenant applied to cancel the notice but was unsuccessful. The landlord was issued an order of possession effective August 31, 2015, and the tenant was served with the order of possession. The tenant did not remove all of his belongings from the site, and in December 2015 the landlord hired a bailiff to execute a writ of possession.

*Tenant's Claim*

The tenant claimed \$3,857.20, representing rent payments he made to the landlord from December 2013 to May 31, 2105. The tenant argued that because he did not have a written tenancy agreement with the new owner, there was no tenancy agreement and the landlord had no right to collect rent from the tenant. The tenant cited a decision of the BC Supreme Court, *Darbyshire v. Residential Tenancy Branch* (2013 BCSC 1227), submitting that this decision stood for the proposition that the legislation requires a written tenancy agreement and without one there is no tenancy.

The landlord responded that when they purchased the park, they sent out park rules and new month to month leases to all of the tenants in the park, but the tenants refused to sign the leases and formed a committee to oppose the landlord. The landlord stated that they received an order of possession from the Branch and a writ of possession from the Court, and the tenant was not complying with either order.

I note that in the tenant's evidence is a letter dated May 6, 2015 from the director of the Residential Tenancy Branch to the tenant. In the letter, the director explained to the tenant that the legislation, the common law and recent case law all support the proposition that oral tenancy agreements are enforceable. The director noted that this

letter was the third letter providing information to the tenant on this point, and any further correspondence from the tenant in relation to this issue would be placed on file.

### *Landlord's Claim*

The landlord claimed compensation of \$22,352.12 for costs related to evicting the tenant and removing the tenant's possessions from the site, as well as for unpaid rent and registered mail costs.

The landlord stated that because the tenant refused to vacate the site and he stopped paying rent, it was necessary for them to obtain a writ of possession and hire a bailiff and moving company to enforce the order of possession. The landlord stated that they were able to have some of the bailiff and moving services costs reduced, and this reduction is reflected in their reduced claim. During the hearing the landlord further reduced the portion of their claim for the moving company's eviction services from \$9,238.73 to \$6,377.80.

The landlord stated that the tenant abandoned his possessions on the rental site. The landlord provided an estimate of \$13,000.00 for removing the tenant's possessions, and stated that of the sites to be cleared the tenant's is the worst, containing more junk than the others and likely more expensive to clean because the tenant conducted outboard motor repairs on the site and spilled oil has contaminated the ground.

I note that in their calculation of their claim, the landlord deducted \$2,584.80, the compensation equivalent to 12 months of rent. This compensation is owed to the tenant pursuant to the 12-month notice to end tenancy.

The tenant's response to the landlord's claim was as follows.

The tenant submitted that there is no authority under the Act for the landlord to claim recovery of their registered mail costs.

The tenant submitted that the eviction was illegal; the landlord has provided conflicting numbers for the bailiff and moving costs, some of which is only based on estimates or amounts that have not yet been paid; and the landlord's descriptions of the possessions on the property is inaccurate. The tenant stated that there is only one vehicle on the property, and other property was dumped there from other sites. The tenant stated that what the landlord refers to as "garbage" is in fact thousands of dollars' worth of motor parts.

## Analysis

### *Tenant's Application*

The tenant's application has no merit. As has been pointed out to the tenant in several communications with the Branch, oral tenancy agreements are enforceable. The tenant had an oral tenancy agreement with the previous owner of the park, and that tenancy continued under the new owner. As set out in section 1 of the *Manufactured Home Park Tenancy Act*, a tenancy agreement includes an oral agreement. Under section 84 of the Act, except where modified by the legislation, the common law applies to landlords and tenants.

I do not agree with the tenant's submission that the decision in *Darbyshire* stands for the proposition that all tenancy agreements must be written. I direct the tenant's attention to the BC Supreme Court decision in *Johnson v. Patry* (2014 BCSC 540), where at paragraph 7 Mr. Justice Affleck sets out his reasons for concluding that the decision in *Darbyshire* is inconsistent with the conclusion that to be enforceable a tenancy agreement must be written. I defer to Mr. Justice Affleck's reasoning in this matter.

I find that the tenant had a valid tenancy agreement with the landlord and as such was required to pay rent. The tenant's application is therefore dismissed.

### *Landlord's Application*

The landlord's claim for registered mail costs is dismissed as, aside from the filing fee, each party to dispute resolution generally bears their own costs related to the dispute resolution process.

The issue of the notice to end tenancy was determined in a previous hearing and is therefore *res judicata*. I do not have any authority to make a determination regarding the validity of the order of possession issued against the tenant. I accept the landlord's undisputed evidence that the tenant did not vacate the rental site after August 31, 2015, the effective date of the order of possession. I find that the landlord is entitled to \$80.00 for the cost of filing for a writ of possession. I also accept the landlord's evidence, including invoices and proof of payment, showing that they are entitled to \$1,238.88 for the bailiff costs and \$6,377.80 for the moving company's cost. The landlord took steps to attempt to reduce these costs, and further reduced this claim in the hearing.

In regard to the estimated \$13,000.00 for removal of the tenant's property, I find that the landlord has failed to provide sufficient specific evidence to support the amount of this quote, or that they took all reasonable steps to attempt to reduce this cost. I therefore dismiss this portion of the landlord's claim.

I accept the landlord's evidence that the tenant stopped paying rent but continued to occupy the rental site. However, it is not clear to me why the landlord did not take steps much earlier to hire a bailiff and have the tenant removed. The landlord would not have been receiving rent from a new tenant after this tenant vacated; therefore, the landlord cannot claim lost revenue. I therefore find that the tenant was only responsible for rent until August 31, 2015. The tenant occupied the site rent-free for the months of June, July and August 2015, and I find that the tenant was therefore compensated for three of the 12 months of compensation to which he was entitled under section 44 of the Act.

The tenant is entitled to compensation equivalent to 9 months of rent, in the amount of \$1,938.60, and I therefore deduct that amount from the landlord's monetary award.

### Conclusion

The tenant's application is dismissed.

The landlord's application was partially successful. I grant the landlord an order under section 67 for the balance due of \$5,758.08. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: December 23, 2016

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Residential Tenancy Branch