



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNR, ERP, LAT, MNR, RP

### Introduction

The application regarding the above-noted tenancy is before me pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”). The tenant’s application, filed December 28, 2016, originally sought the following:

- cancellation of the landlord’s 10 Day Notice to End Tenancy Unpaid Rent or Utilities dated December 16, 2016 (“10 Day Notice”);
- more time to apply for the cancellation of the 10 Day Notice;
- a monetary order for the cost of emergency repairs;
- an order that the landlord make repairs and emergency repairs; and
- an order authorizing the tenant to change the locks;

At the outset of the hearing the tenant’s son testified that his father was no longer on the property because the landlord had assaulted him, cut off his electricity, and changed the lock on the pump house. The tenant did not wish to continue the tenancy but was not yet able to remove his trailer from the property. The tenant therefore withdrew his requests for orders requiring the landlord to make repairs and authorizing the tenant to change the locks. He also withdrew his application for an extension of time in which to file his application to dispute the 10 Day Notice.

Both the landlord and the tenant attended the hearing. The tenant’s son spoke on the tenant’s behalf. Another person attended with the tenant but did not give evidence or make submissions. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony (the tenant through his son) and were provided the opportunity to present their evidence orally and in written and documentary form, to cross-examine the other party, and make submissions.

Service of the tenant’s application and dispute resolution hearing package on the landlord was not at issue. However, service of the landlord’s responsive evidence was not admitted by the tenant. The landlord testified that he served the tenant with his

responsive evidence by way of registered mail and provided a Canada Post receipt dated January 11, 2017 in support of this. Although the address slip is not made out, the landlord testified that he sent the package to the rental unit address, which is serviced by a set of mailboxes. The tenant says that he left the property in the beginning of January and does not have mail key. The landlord says he does not have the key either.

The landlord's responsive evidence, which the tenant says he did not receive, includes receipts and quotes that may be relevant to the tenant's emergency repair claim. I have given the tenant leave to reapply on the monetary portion of his claim, and the landlord's evidence must be shared with the tenant and resubmitted to the Residential Tenancy Branch in response to another application.

The tenant filed an amendment to his application on January 18, 2017, adding a monetary claim for \$22,316.93 in electricity costs over the last two years. A billing history in a third party's name was submitted in support of this claim. It was not clear that the landlord had received the amendment. However, because I will not be considering this aspect of the tenant's claim for the reasons set out below, service of the amendment is not relevant.

At the outset of the hearing, the landlord advised that his name had been incorrectly spelled on the tenant's application, and I have amended the style of cause to reflect the correct spelling of the landlord's name.

I have reviewed and considered all evidence and testimony before me that met the requirements of the Rules of Procedure, but refer to only the relevant facts and issues in this decision.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 10 Day Notice?

Is the tenant entitled to a monetary order for the cost of emergency repairs?

#### Background and Evidence

##### ***The Tenancy Agreement***

A copy of the tenancy agreement was submitted by the tenant. This agreement is on the Residential Tenancy Branch's form for a residential as opposed to a manufactured

home park tenancy. It records a tenancy starting May 1, 2015 for a two year term, continuing as a month to month thereafter, with a monthly rent of \$800.00 due on the first of each month. Storage/outbuildings and water, but not electricity, are included in the rent. The tenancy agreement also records a security deposit of \$800.00 payable at the beginning of the tenancy.

The landlord agreed that there was a tenancy agreement. He agreed that the first and last pages of the agreement submitted by the tenant were legitimate, and that rent was \$800.00 per month, payable on the first. However, he alleged that the tenant had falsified the other pages, that no security deposit had in fact been paid, and that the tenancy had not actually been for a fixed two year term. He said that he signed the tenancy agreement in a parking lot and the tenant took it.

Both landlord and tenant agreed that the landlord accepted rent only in cash and did not provide receipts.

The parties agreed that there was no residence on the property and that the tenant was paying \$800.00 month for a spot to live in his largely self-contained trailer.

### ***The 10 Day Notice for Non-Payment of Rent***

The tenant confirmed receipt of the 10 Day Notice on the evening of December 19, 2016. The tenant's son said that the landlord ripped the door of his father's trailer to serve the 10 Day Notice personally, and that his father was subsequently taken to hospital. The landlord says he posted the 10 Day Notice on the door. The 10 Day Notice, dated December 16, 2016, states that the tenant has failed to pay rent in the amount of \$1,600.00 due on November 1, 2016.

The landlord testified that he had not received any cash for rent since October. He said that he accepted a quantity of marihuana as payment for November and received nothing of value for December. He alleges that the tenant wants to be able to stay on the property to grow marihuana illegally. The tenant's son says that both his father and the landlord have licences to grown marihuana. No licences were in evidence.

The tenant's son said rent was paid in both November and in December and that the landlord does not issue receipts. The landlord agreed that he did not issue receipts.

The tenant's son said that the landlord received cash for November's rent and marihuana in lieu of cash for December. He pointed to copies of his text messages with the landlord as evidence that December's rent had been paid. One of those messages,

from the landlord, which the tenant says is from December 19 reads: "K does not do me much good. If your going to pay me in stuff. The last one got me 600. So im pissed. Double the next one or get me cash (reproduced as written)."

A text from the tenant's son to the landlord from December 20 reads: "BARRY PLEASE Send me your email address and I will transfer you your rent of 800 for [tenant's name omitted] . . . if you deny this this will be a refusal to take payment and your order will be void . . . " (reproduced as written).

### ***Monetary claims***

The tenant seeks compensation for emergency repairs. He says made repairs to the barn or garage roof after a tree damaged it in a windstorm. He says that he was storing various things in the garage and it had to be repaired to keep them protected. He says he asked the landlord twice to repair the roof. He also says the landlord demanded that he repair the roof himself. Although he claims repair costs of \$1,837.25 the tenant did not submit any documentation to this amount. The landlord submitted receipts made out to the landlord for materials that he says were for the roof repair. These are in the materials that the tenant says that he has not received.

The tenant also seeks the cost of having the well pump replaced. He says that drinking water was not available unless this was operative and that he was without water from mid-November. He says he probably asked the landlord ten times to repair this and that he spent \$400.00 on the pump and an additional amount to have it installed. He further says he has some evidence of these costs but did not submit it. He points to a December 19, 2016 text from the landlord to the tenant's son in evidence, in which the landlord states: "I still need a receipt for the pump. Which I do not have. The one was working on the farm before you guys came out there. My pump was a ¾ horse. Get your act together (reproduced as written)." There is also a text from the tenant's son to the landlord sent December 20 or 21 as follows: "we will be making an emergency repair request. As per the rental tendency act Emergency repairs for the well to be fix so [name omitted] can have water on the property as per his rental agreement if we call [company name omitted] and have them do it it will cost 3000+ so please have fixed this issue resolved asap. . .(reproduced as written)."

The tenant also seeks \$3,000.00 for an electrical panel replacement. There are no receipts or invoices in evidence and there is no record of correspondence with the landlord asking him to make this repair or providing him with the costs of same. The landlord submitted some quotes for electrical panels, but this is also evidence which the tenant says that he has not received. The landlord says that the tenant replaced the

panel because he was growing marihuana on the property and need more power. The tenant says the power was needed to provide heat when the propane in the self-contained trailer ran out. The tenant says he asked the landlord twice to repair the panel. The landlord says this is not so.

As set out above, the tenant also submitted late evidence of electricity charges for which he seeks compensation from the landlord. He says the landlord drew on the electricity and the water.

The tenant also sought compensation for some outbuildings that he says he built over the course of the tenancy. He did not specify how these would qualify as emergency repairs and withdrew his claim for these costs at the hearing.

### Analysis

There is no doubt that a tenancy exists. Both the landlord and the tenant's son gave affirmed evidence of this. The landlord disagreed only on certain terms of the tenancy – namely, whether a security deposit was paid and whether the tenancy was fixed term or month to month. I am satisfied that this is a tenancy under the Act. The trailer is clearly a “manufactured home” under the definition in the Act, and the property, although it offered only one site for rent, falls under the definition of a “manufactured home park.” I also find on a balance of probabilities that the tenants did pay a security deposit, as recorded in the agreement in evidence.

Section 39 allows a landlord to end a tenancy if rent is unpaid on any day after the day it is due by giving notice compliant with s. 45. Section 39(4) requires the tenant to pay the rent owing or dispute the notice within five days of receipt of the notice. Here, the tenant has applied in time to dispute the notice. He was served on December 19, 2016, and the Residential Tenancy Branch's Rules of Procedure state that if the time for doing an act falls or expires on a holiday, the time is extended to the next day that is not a holiday. The deadline is thus extended until December 28, 2016.

The landlord has the burden of proof here and must establish that rent was unpaid as alleged. Section 20(2) of the Act requires that a landlord provide a tenant with a receipt for rent paid in cash. This landlord admits that he never provided receipts. Based on the affirmed evidence of the tenant's son and the text correspondence in evidence I find that the tenant gave the landlord marihuana in lieu of cash for December's rent. I further find that the landlord was not happy with the amount he subsequently sold the marihuana for. The value of the marihuana is not something I am able to quantify. It appears that the landlord was willing to accept a commodity in lieu of cash until he

realized its cash value. Leaving aside the legality of this transaction, there is insufficient evidence that the tenant failed to pay rent as alleged.

I also note that the tenant's son asked the landlord for his email so that he could pay money for December's rent when it became clear the landlord was alleging non or insufficient payment. The landlord did not provide his email.

Lastly, s. 39(3) provides that a 10 Day Notice to End Tenancy for Unpaid Rent "has no effect if the amount of rent that is unpaid is an amount the tenant is permitted under this Act to deduct from rent" and s. 17 of the Act prevents a landlord from charging a security deposit and allows the tenant to deduct the amount of any security deposit charged from rent otherwise owing. I accept that the security deposit was paid as the tenant states. Accordingly, I find that this amount could have been deducted from any rent owing in any event.

However, I note that this tenancy has ended through a hearing held before a different arbitrator. My decision here has no effect on that other decision and the tenancy has in fact ended because of that hearing.

### ***Monetary relief***

Section 27 of the Act defines "emergency repairs" as repairs that are "(a) urgent, (b) necessary for the health or safety of anyone or for the preservation or use of property in the manufactured home park, and (c) made for the purpose of repairing (i) major leaks in pipes, (ii) damaged or blocked water or sewer pipes, (iii) the electrical systems, or (iv) in prescribed circumstances, the manufactured home site or the manufactured home park."

No evidence has been submitted as to what was stored in the barn whose roof was repaired, and I am as a result unable to say the repair qualifies as an emergency. The tenant has also failed to establish the cost of the roof repair, although he has claimed a specific amount for it in the monetary worksheet filed with the application. There are no receipts or invoices in evidence for labour or materials. The tenant says the landlord has these and the landlord says he paid for the materials for the repair himself.

Evidence of the costs associated with the purchase and installation of the well pump is also missing. The tenant argues that the texts in evidence confirm that the landlord agreed to pay these costs. However, the texts also make clear that as of late December, the tenant had not yet provided the landlord with copies of the receipts for this claim. Section 27(5) requires that the landlord reimburse the tenant only after the tenant (a) claims reimbursement for those amounts from the landlord, and (b) gives the

landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. I find the tenant has not established either the cost of these repairs or the fact that he provided the landlord with same. It is still open for the tenant to supply these to the landlord and seek repayment.

The tenant's amendment of his claim for \$22,316.93 in electricity costs over the last 2 years cannot be considered. The tenancy agreement does not require the landlord to pay for electricity. The tenant's son testified that the tenant himself is responsible for power bills. If there is any disagreement between the landlord and tenant here with respect to electricity bills, it is not within my jurisdiction under the Act.

### Conclusion

The tenant's application to cancel the 10 Day Notice is allowed.

The tenant's application for a monetary order for the cost of emergency repairs is dismissed, with leave to reapply.

The landlord is reminded that it is his responsibility pursuant to s. 13 of the Act to prepare a written tenancy agreement, and that s. 20(2) of the Act requires that landlords issue receipts for rent paid in cash.

It has been brought to my attention that this tenancy has been ended due to a different hearing. My decision here has no bearing on that hearing and the tenancy has been ended as a result of the other hearing.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*. Pursuant to s. 77 of the *Act*, a decision or an order is final and binding, except as otherwise provided in the *Act*

Dated: January 31, 2017

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Residential Tenancy Branch

