



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0868732 B.C. Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities.

The tenant attended the hearing with someone to assist. An agent and a witness for the landlord also attended. The tenant, the landlord's agent and the landlord's witness each gave affirmed testimony, and the parties were given the opportunity to question each other and the witness.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Should the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities be cancelled?

### Background and Evidence

**The landlord's agent** testified that this month-to-month tenancy began some time in 2005 and the tenant still resides in a manufactured home in the manufactured home park. Rent in the amount of \$325.00 per month was payable on the 1<sup>st</sup> day of each month until January, 2017 when rent was raised to \$335.00 per month.

The landlord's agent further testified that on May 12, 2017 he personally served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided for this hearing. It is dated May 12, 2017 and contains an effective date of vacancy of May 22, 2017 for unpaid rent in the amount of \$370.00 that was due on May 1, 2017.

The tenant is currently in arrears of rent the sum of \$377.50. The landlord has no record of any payment of rent for November, 2016 and the landlord is owed \$325.00. Further, the tenant started to pay with a bank draft which cost \$7.50 each, and the tenant deducted that amount from the rent for December, 2016 as well as for January, February, March, April, and May, 2017. The shortfall amounts to \$45.00. Again this month the tenant paid \$327.50 instead of the required rental amount of \$335.00, bringing the arrears to \$377.50.

**The landlord's witness** testified that there was a bank draft for \$325.00 in October, 2016 for November's rent, but the landlord didn't receive the money. The tenant was given a receipt showing the shortfall of \$7.50.

**The tenant** testified that he started paying rent with a bank draft because new owners of the park are a group of people, and there have been several different managers over time, none of whom ever gave receipts. For some period of time there was no manager in the park.

The tenant also testified that the landlord's bookwork and money were left in a van which was stolen, and the landlords didn't have accurate records. The landlords sent tenants a letter asking if rent had been paid, and tenants were to mail in rent cheques. The landlord's agent sent a letter to the tenant about past due rent with a copy of a Customer Balance Detail, and copies have been provided for this hearing. The tenant does not deny that he reduced the amount by the cost of purchasing the bank draft each month, but disputes that rent was not paid for November, 2016. The only receipt the tenant received was in June, 2017, and the bank drafts given to the landlord each say that if cashed, payments are made in full.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Manufactured Home Park Tenancy Act*.

I have reviewed the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and I find that it is in the approved form and contains information required by the *Act*.

The landlord's agent testified that the tenant paid rent for June, 2017, after the effective date of the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. If a landlord does not want the tenancy to continue, the landlord should not refuse rent but must give the tenant a receipt or some other writing that states that the rent money is being accepted for use and occupancy only and does not serve to reinstate the tenancy.

A tenant may not deduct the cost of a money order or bank draft from the amount of rent due to the landlord. Therefore, I find that the tenant certainly owes the landlord \$52.50. However, the tenant testified that the landlords lost money and records when the van was stolen, and the landlord's agent did not dispute that. I am not satisfied that the landlord has established that the rent for November, 2016 hasn't been paid.

In the circumstances, I find that the landlord has, in effect, reinstated the tenancy, and therefore, I cancel the notice to end the tenancy. If rent remains unpaid, the landlord will be at liberty to issue another notice to end the tenancy.

### Conclusion

For the reasons set out above, the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated May 12, 2017 is hereby cancelled and the tenancy continues.

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: June 27, 2017

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Residential Tenancy Branch