



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HIGHVIEW ESTATES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR

### Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Parks Tenancy Act* ("Act") for cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice) pursuant to section 39.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The personal landlord spoke on their own behalf as well as for the named corporate landlord.

As both parties were in attendance service of documents was confirmed. The tenant confirmed receipt of the 10 Day Notice and the landlord's evidence. The landlord confirmed receipt of the tenant's application for dispute resolution and evidence. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 81 and 82 of the *Act*.

### Issue(s) to be Decided

Should the 10 Day Notice be cancelled? If not are the landlords entitled to an order of possession?

### Background and Evidence

The tenant has been a resident of the mobile home park since 1998. The corporate landlord took over this tenancy in July 2017 from the previous park owners. The current monthly rent is \$360.00 payable by the first of each month.

The landlord testified that in addition to the monthly rent the tenant is responsible for paying a \$10.00 monthly water charge. The landlord said that when they assumed the tenancy in 2017 there was no credit or debit balance for the tenancy. The landlord's documentary evidence includes a review of the terms of purchase of the park declaring that there was no credit or debit as at July 2017. The landlord testified that there was an arrear of \$393.99 as at December 3, 2018 when the 10 Day Notice was issued, comprised of a \$25.00 late fee and rent and water arrear of \$368.99. The landlord submitted into written evidence a copy of the account ledger for this tenancy for the period of Aug 2017 to Dec 2018 showing an outstanding amount of \$368.99.

The tenant testified that their records indicate that there was a credit balance as at July 2017 when the landlord took over this tenancy and that the current balance should be a credit of \$669.86. The tenant also said that the monthly rent is \$360.00 but that no water bills are payable. The tenant submitted into documentary evidence their account ledger showing payments made over the course of the tenancy including the amounts paid, the running balance and the numbers for money order payments. The tenant also submitted copies of money order payments and receipts in support of their position.

### Analysis

In accordance with subsection 39 (4) of the *Act*, the tenant must either pay the overdue rent or file an application for dispute resolution within five days of receiving a 10 Day Notice. Where a tenant applies to dispute a 10 Day Notice, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 10 Day Notice is based. In the present case the landlord testified that there was a rent arrear of \$393.99 at the time the 10 Day Notice was issued. The tenant denies that there was a rental arrear and testified that there should be a credit balance for their tenancy.

Both parties presented cogent, reasonable testimony supported by their own account ledgers. There is a fundamental disagreement between the parties' respective accounting. The landlord submits that there was a 0 balance as at July 2017 when they purchased the park and the payments made by the tenant less the rent owing, late fees and rent due. The tenant's hand written ledger goes back to 2007 and shows payments and deductions. The tenant's calculations show that there is currently a credit balance.

I find the evidence of both parties to be equally credible. Both ledgers appear to have been maintained over a period of time and neither appears to have been created recently for this dispute application. The tenant has kept photocopies of money order

payments and the serial number for the money orders. I find that both parties have presented reasonable submissions supported with credible documentary evidence.

Under the circumstances I find that both versions of the status of the rent balance to be equally likely. Where both parties have provided equally likely scenarios I am unable to find that the landlord has met their evidentiary burden. I find that the landlord has not met their evidentiary burden of showing on a balance of probabilities, that it is more likely than not, that their calculation is more likely than that of the tenant.

Therefore, I find there is insufficient evidence to support the landlord's 10 Day Notice to be upheld.

### Conclusion

The landlord's 10 Day Notice, dated December 3, 2018, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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: January 7, 2019

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Residential Tenancy Branch