



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

### **Dispute Codes**

Landlord: OPC, FF  
Tenant: CNC

### **Introduction**

This hearing was convened by way of conference call to deal with cross applications by the landlord and the tenant. The landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenant for the cost of this application. The tenant has applied for an order cancelling the notice to end tenancy.

The parties each gave affirmed evidence and were given the opportunity to cross examine each other on their evidence.

### **Issues(s) to be Decided**

Is the landlord entitled to an Order of Possession for cause?

Is the tenant entitled to an order cancelling a 1 Month Notice to End Tenancy for Cause?

### **Background and Evidence**

This tenancy is a month-to-month tenancy of a mobile home owned by the tenant, which is situated on a pad in a mobile home park owned or operated by the landlords. Rent in the amount of \$240.00 is payable in advance on the 1<sup>st</sup> day of each month, and there are no rental arrears.

The landlord testified that on or about April 30, 2010 she was at her home and a friend who was visiting told the landlord that she was going to another mobile home to see her

brother. She stated that the friend is afraid of her brother and wanted the landlord to know where she was. Soon thereafter, the landlord heard a scream and another tenant told her to call the police. She was told by the tenant's sister that her brother had swung an axe at her head. The police arrived and took the landlord's statement, then went to look for the tenant. The tenant was located and the police issued to him an Undertaking Given to a Peace Officer or Officer in Charge with a condition that he have no contact with the tenant's sister.

The landlord issued a 1 Month Notice to End Tenancy for Cause on May 17, 2010, a copy of which was provided in advance of the hearing which states that the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. That notice is dated May 17, 2010, was served on that date, and has an expected vacancy date of June 17, 2010. The tenant disputed the notice on May 27, 2010 by filing a Tenant's Application for Dispute Resolution.

The landlord further testified that on or about June 15, the tenant went to her home and accused her of sending people to his home with a gun in an effort to get him out of the park. The landlord denied any knowledge of that, and her husband called the police. Again the police attended and took a statement from the landlord. Later that day the police attended the landlord's residence and told her that they had arrested the tenant for uttering threats and breach of the Undertaking, and provided her with a copy of another Undertaking with conditions, including a condition that the tenant have no contact with the landlord.

The tenant testified that he did not swing an axe at his sister. He stated that his sister had previously resided with him, and she entered his home with a male friend on April 30, 2010, they had a verbal dispute and he asked her to leave. She would not leave, and he had a job interview to attend and did not want her in his home when he was not there. He obtained an axe from her car, but did not swing it or threaten her with it. He stated that his blinds were closed, no altercations took place outside his mobile home

and he immediately went back into the residence. He further stated that the charges from that altercation were dropped by the Crown.

When questioned about other occupants complaining about the tenant, or any other difficulties with the tenant, the landlord stated that there were none. He feels that his sister exaggerated what had happened to the landlord and that is why he was served with the notice to end tenancy.

The sister of the tenant, and friend of the landlord, did not attend the hearing. She did, however, supply a written letter of her version of events. She was not available for cross examination. Another unnamed tenant provided a letter stating that he/she saw the tenant with the axe and heard the scream. That person as well did not attend the hearing, and was not subject to cross examination.

The landlord also testified that the sister was a tenant in this tenant's mobile home at the time, however the tenant testified that she had moved out of the mobile home weeks prior to April 30 and now lives with her Aunt.

### **Analysis**

In order to be successful with a 1 Month Notice to End Tenancy for Cause when disputed by the tenant, the onus is on the landlord to prove that the allegations justify the cause. I have no reason to believe the tenant any less than I believe the landlord. If any assault or threat took place, it will be up to the Courts to determine. It is for me only to determine whether or not the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. No other occupant has complained about the tenant, and it is just as likely that the tenant's sister was not truthful to the landlord about what actually took place that day. I find that the landlord has failed to establish that she or any other occupant of the mobile home park have been adversely affected by any illegal actions of the tenant.

**Conclusion**

The landlord's application for an Order of Possession is hereby dismissed.

The notice to end tenancy is hereby cancelled.

Since the landlord has not been successful with the claim, I decline to order that the landlord recover the filing fee from the tenant for the cost of this application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 15, 2010.

---

Dispute Resolution Officer