



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 59;
- cancellation of the landlord's 1 Month Notice pursuant to section 40; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The landlord's lawyer said that the tenant had mistakenly identified GC, a lawyer who had been involved in the real estate transaction that changed the ownership of the property in the summer of 2011, as one of the landlords or one of the landlord's agents. Ms. C was in attendance at the hearing. The tenant said that he was unaware that Ms. C was not one of the landlords and agreed to remove her name from his application. With the tenant's agreement, I amended his application to note one landlord, TDC., as outlined above.

Landlord Witnesses PP and TM testified that they handed the tenant a 1 Month Notice on August 30, 2011. The tenant and his wife confirmed that he received the 1 Month Notice on August 30, 2011. The tenant testified that he sent the landlord and another individual he then believed was also his landlord, GC, a copy of his dispute resolution hearing package by registered mail on October 12, 2011. He said that he sent them copies of both his original September 21, 2011 application and his amended September 23, 2011 application. The landlord's lawyer and the landlord's representative confirmed that the landlord received a copy of the tenant's dispute resolution hearing package. I am satisfied that the parties served the above documents in accordance with the *Act*.

During the hearing, the tenant referred to photographs that he claimed to have submitted into written evidence for this hearing. Although I have no record of the Residential Tenancy Branch's receipt of this photographic evidence, the absence of this information has not affected my consideration of the tenant's application.

At the commencement of the hearing, the landlord's lawyer made an oral request for an Order of Possession if I were to dismiss the tenant's application to cancel the 1 Month Notice. However, the landlord entered no written evidence. Neither party entered into written evidence a copy of the 1 Month Notice.

#### Issues(s) to be Decided

Should the tenant be granted an extension of time to apply to cancel the landlord's 1 Month Notice? If so, should the landlord's 1 Month Notice be cancelled? If not, should this tenancy end and should the landlord be issued an Order of Possession? Is the tenant entitled to recover his filing fee for this application?

#### Background and Evidence

The landlord obtained title to this property during the summer of 2011. The tenant and his wife testified that they built this modular home on blocks in 2006 with the permission of the then owner. At some point, the tenant looked after this property for the then landlord in a caretaker role. However, the landlord's lawyer maintained that there had been no employer/employee relationship in which the tenant received payment for at least three years and the tenant has never done work for the current landlord.

The landlord's lawyer said that the landlord is not interested in the building itself, but as there is no employment relationship the tenant and his wife needed to vacate the property.

#### Analysis

I first considered the tenant's application to obtain more time to file his application for dispute resolution. The tenant said that he was hospitalized immediately after receiving the 1 Month Notice on August 30, 2011. He testified that he was unable to submit an application for dispute resolution until he returned from his hospital stay. His wife confirmed that her husband had a serious blood clot two days after he received the 1 Month Notice, likely prompted by the stress caused by receiving the landlord's 1 Month Notice for a building they considered to be theirs. The tenant's wife said that they did not review in detail the 1 Month Notice before her husband was hospitalized or until he returned from the hospital. The tenant and his wife said that they did not realize that they had only ten days to file an application for dispute resolution regarding the landlord's 1 Month Notice.

At the hearing, I advised the parties that the tenant had not submitted any documentation to confirm his hospital stay or his incapacity to file an application for dispute resolution until 22 days after he received the landlord's 1 Month Notice. During the initial ten-day period, I found no compelling reason why the tenant, the tenant's wife

who was clearly aware of the 1 Month Notice, or someone appointed by them as the tenant's agent could not have filed an application for dispute resolution seeking cancellation of the landlord's 1 Month Notice. I advised the parties that I would be dismissing the tenant's application for an extension of time beyond the ten-day period for filing an application for dispute resolution. As such, I said that the tenant's failure to provide adequate evidence to confirm why he could not have filed an application led me to the conclusion that the tenant had accepted the tenant's 1 Month Notice.

In the absence of any written evidence regarding this matter from the landlord, including a copy of the 1 Month Notice, I advised the parties that it was unlikely that I would be willing to issue an Order of Possession to the landlord.

Pursuant to section 56 of the *Act*, the dispute resolution officer may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. At this point in the hearing, the parties agreed to discuss the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve all issues between them on the following terms:

1. Both parties agreed that this tenancy will end by March 23, 2012, by which time the Ds will have vacated the premises.
2. The landlord confirmed that the landlord has no use for the tenant's building. The parties agreed that between now and March 23, 2012, the tenants have the right to remove the dwelling from the property.
3. The parties agreed that if the D's dwelling on the property is not removed by March 23, 2012, the landlord will take possession of that building.
4. The tenants agreed that the tenants and anyone assisting them to move their dwelling from this property will be responsible and bear all risks and indemnify and save harmless the landlord for the use, occupancy or moving of the dwelling from the premises and anything resulting therefrom.
5. The parties agreed that the tenants will be given walking and vehicular access to the well on the property for access to the well and for issues relating to the well until the end of this tenancy.
6. The parties agreed that the Ds will lose any right, title or claim to the building if the Ds do not remove it by March 23, 2012.

These particulars comprise the full and final settlement of all aspects of this dispute for both parties.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I issue the attached Order of Possession to be used by the landlord if the tenant(s) do not vacate the rental premises in accordance with their agreement. Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: November 23, 2011

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Residential Tenancy Branch