



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes** MT, CNC, FF, O

### **Introduction**

This matter dealt with an application by the Tenant for more time (or leave) to apply late to cancel a Notice to End Tenancy and to cancel a One Month Notice to End Tenancy for Cause dated October 4, 2011 as well as to recover the filing fee for this proceeding.

On the first day of hearing, the Tenant attended with his roommate, K.B., who was acting as his Advocate. At the beginning of the second day of the hearing, K.B. attended without the Tenant and claimed that the Tenant had been hospitalized on December 3, 2011 and would not be able to attend the hearing. K.B. sought an adjournment of the hearing until the Tenant could be released from the hospital which she estimated would be approximately one week. K.B. then claimed that the Tenant was in such poor physical condition that she believes his Tenant's mental capacity has also been permanently impaired. Consequently, K.B. admitted that the Tenant may not be well enough to participate in the hearing following an adjournment of only a week. K.B. claimed that while the Tenant was currently preparing to live with family members and had packed many of his belongings, he did not want to have to move the manufactured home (which is currently listed for sale).

The Landlord's agent, P.A., objected to an adjournment of this matter on the grounds that the Tenant had not applied to cancel the One Month Notice within the time limit required under the Act and he believed that this was solely an attempt by K.B. to delay the proceedings further.

Although K.B. attended with the Tenant on the first day of hearing to act as his advocate, there is no evidence that the Tenant authorized K.B. to attend the hearing on the second day of the hearing to give arguments and evidence on his behalf. Furthermore, during the first day of the hearing, I heard evidence and arguments from both Parties as to whether the Tenant should be granted leave to apply late to cancel the Notice to End Tenancy. The second day of hearing was re-convened to hear evidence regarding the grounds set out on the Notice itself. Having reviewed the evidence from the 1<sup>st</sup> day of hearing, however, I find that a 2<sup>nd</sup> day of hearing is unnecessary as I find that the Tenant has not met the test for being granted leave to apply late to cancel the Notice to End Tenancy (for the reasons set out below under the Analysis section). Consequently, K.B.'s application for an adjournment of the hearing was not granted and upon being advised of this, K.B. left the conference call.

**Issue(s) to be Decided**

1. Are there exceptional circumstances that warrant allowing the Tenant to apply late to dispute the One Month Notice to End Tenancy for Cause?
2. Does the Landlord have grounds to end the tenancy?

**Background and Evidence**

This tenancy started in May 2006. On October 4, 2011, the Tenant was served in person with a One Month Notice to End Tenancy for Cause dated October 4, 2011. The Landlord's agent said there have been a number of disturbances caused by the Tenant and his roommates which have allegedly involved drunken fights with weapons on some occasions. The witness for the Landlord (who is the resident park manager) said she has also received complaints from other occupants in the Park about the Tenant and his roommate, K.B., and her son who visits from time to time.

The Landlord's agent said that on August 23, 2011 following an incident, the property manager had a meeting with the Tenant and advised him that he would not tolerate any further disturbances. The Landlord's resident manager, E.R., said on August 29, 2011 she gave the Tenant a warning letter to the same effect and said she discussed it with him and in particular advised him that he would be evicted if there were any further disturbances. E.R. said the Tenant told her that he understood and promised her that there would be no further incidences. The Landlord's agent said the RCMP was dispatched to the Tenant's residence again on September 28, 2011 due to a complaint of fighting and yelling. Consequently, the Landlord's agent said on October 4, 2011 her spouse served the Tenant with the One Month Notice to End Tenancy for Cause and explained it to him. In particular, E.R. said the Tenant was advised that the Landlord wanted him and his manufactured home to leave the Park due to the ongoing disturbances and that if he did not agree to do so, he had 10 days to dispute the Notice with the Residential Tenancy Branch.

The Tenant's roommate, K.B., admitted that the Tenant received the One Month Notice on October 4, 2011 but claimed that he did not apply to cancel it on time because he could not read it and that she was not there at the time to read it to him. The Tenant's roommate said when she arrived at the Tenant's residence on October 14, 2011 (a Friday), the Tenant showed her a copy of the One Month Notice. The Tenant's roommate claimed she attended the Residential Tenancy Office with the Tenant the following Monday (October 17, 2011), however the Tenant did not file an application on that day. The Tenant's advocate said she was unavailable to assist the Tenant for the rest of that week so the Tenant did not return to the Residential Tenancy Office to file his application until October 24, 2011 (when he attended on his own). The Landlord's agents claimed that K.B. has been a full time occupant of the rental unit since August.

The Tenant's roommate also said the Tenant suffers from a number of medical conditions which limit his ability to get around. The Tenant provided a letter from his physician dated October 25, 2011 to that effect. The Tenant's roommate also said she believes the Tenant is depressed as a result of a divorce and the death of some family members over the past 2 years.

### **Analysis**

Section 40(5) of the Act says that if a Tenant who receives a One Month Notice to End Tenancy for Cause does not apply to dispute it within 10 days, then they are conclusively presumed to have accepted that the tenancy will end on the effective date of the Notice and they must vacate the manufactured home site by that date.

#### **Application for Leave to Apply late:**

Section 59(1) of the Act says that the director may extend a time limit established by the Act but only in exceptional circumstances. RTB Policy Guideline #36 describes some examples of the circumstances that may or may not be considered exceptional, such as the following:

- ***Circumstances that are not considered exceptional*** are that the applicant did not feel well or did not know the applicable law or procedure;
- ***Circumstances that are considered exceptional*** are that the applicant had to be hospitalized during the relevant time period ***and*** the applicant has provided evidence that their condition prevented them from contacting another person to act on their behalf.

I find that the Tenant was served in person on October 4, 2011 with a One Month Notice to End Tenancy for Cause dated October 4, 2011. Although the Tenant cannot read, I do not find that this is an exceptional circumstance as I accept the evidence of the Landlord's resident manager that she and her spouse were aware that the Tenant could not read and took steps to explain to him what the document meant and also explained that he had a right to dispute that Notice within 10 days of receiving it. Pursuant to s. 40(5) of the Act, the Tenant had 10 days or ***no later than October 14, 2011*** to apply for dispute resolution to cancel the Notice. The Tenant applied for dispute resolution ***on October 24, 2011*** (or 10 days late).

The Tenant also argued that his medical conditions limited his ability to attend the Residential Tenancy Branch. However, there is no evidence as to why the Tenant's medical conditions prohibited him from attending the Residential Tenancy Branch on October 14, 2011 but did not apparently interfere with his ability to attend on two separate occasions after that date. The Tenant also gave no reason why he did not get assistance or ask an agent file his application on his behalf. Even if the Tenant's

roommate, K.M., did not see the Notice until October 14, 2011 as she claimed, I find it significant that neither she nor the Tenant took any steps to dispute the notice for a further 10 days and at that time, the Tenant did so on his own. The Tenant's roommate further argued that she believes that the Tenant may be suffering serious cognitive impairment (eg. memory loss) and that this may have contributed to his failure to apply on time to cancel the notice. However, neither the Tenant nor his roommate provided any medical evidence in support of this assertion.

In summary, I accept the evidence of the Tenant that he cannot read, however I find that he still knew that he had 10 days to apply to the Residential Tenancy Branch to dispute the Notice to End Tenancy if he did not want to be evicted. I also accept the Tenant's evidence that he has serious medical conditions, however, I find that there is no evidence that these conditions prevented the Tenant from applying to cancel the Notice within the 10 days granted under s. 40(4) of the Act or from obtaining the assistance of someone else to do so on his behalf.

Consequently, the Tenant's application for leave to apply late to cancel a Notice to End Tenancy is dismissed without leave to reapply. As a further consequence, the Tenant is deemed pursuant to s. 40(5) of the Act to have accepted that the tenancy would end on the effective date of the Notice.

### **Conclusion**

The Tenant's application for more time (or for leave) to apply to cancel the One Month Notice to End Tenancy for Cause dated November 4, 2011 is dismissed without leave to reapply. The Landlord's agent requested and I find pursuant to s. 48(1)(a) of the Act that he is entitled to an Order of Possession. As the effective date of the Notice has now expired, the Order of Possession will take effect 2 days after service of it on the Tenant.

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: December 05, 2011.

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Residential Tenancy Branch