



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for the following Order:

1. An Order Cancelling a Notice to End Tenancy for Cause - Section 47.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Notice to End Tenancy valid?

Is the Tenant entitled to a cancellation of the Notice?

### Background and Evidence

The tenancy started in July 2010. On September 26, 2012, the Landlord personally served the Tenant with a One Month Notice to End Tenancy for Cause (the “Notice”) that lists the following reasons for the Notice:

1. Tenant has allowed an unreasonable number of occupants in the unit;
2. Tenant has engaged in illegal activity that has or is likely to:
  - a. Adversely affect the quiet enjoyment, security, safety or lawful right of another occupant or the landlord;
  - b. Jeopardize a lawful right or interest of another occupant or the landlord;
3. Tenant has not done required repairs of damage to the unit/site.

The Landlord states that they are withdrawing the first reason noted in the Notice.

The Landlord states that the Tenant has been using drugs on an ongoing basis but does not know what kind of drugs are being used. The Landlord states that they have lost two other tenants due to the actions of the Tenant and another tenant and that the Landlord is concerned about new tenants being affected by the actions of the Tenant. The Landlord states that the police have been called twelve times over the past three or four months, that the Tenant has been in a physical confrontation with his neighbour and that these confrontations have escalated. The Landlord states that on one occasion just prior to serving the Notice, the Landlord saw the Tenant urinate beside the trailer next to a motel and that the Tenant has been seen passed out in front of his trailer.

The Witness states that about two or three months ago the Tenant was using drugs and would pick fights but that this has stopped since the beginning of October 2012. The Witness states that he has been inside the Tenant's unit and has seen needles and that the Tenant told the Witness that the Tenant was using heroin and morphine. The Witness states that the Tenant also drank while taking these drugs and that "all hell breaks loose" when this occurs. The Witness has states that the Tenant was once seen by the Witness shooting up in the Tenant's yard. The Witness states that he has helped the Tenant out but has only been threatened for his efforts.

The Tenant denies drug use and supplied a letter from another tenant who stayed with the Tenant for a while attesting to this fact. The Tenant denies needles being in the home. The Tenant states that he has never been notified either verbally or in writing that there was a problem with drug use. The Tenant states that he has never been arrested or charged as a result of the police attendances.

A Witness for the Tenant states that the Tenant's partner recently died following a two year illness during which the Tenant was the caregiver and that the Tenant got out of detox approximately a month ago. The Witness states that the Landlord is relying on things that occurred during the summer and that a person who wrote a letter provided as evidence by the Landlord is an unreliable person who mixes drugs and alcohol and

calls the police “every time someone farts”. Further, this Witness states that it is the Tenant’s neighbour who is causing the problems and that the Landlord acts inappropriately towards the Tenant by publically yelling and screaming at the Tenant about matters that should be confidential. The Witness states that the Tenant has a window with tape on it and another window with a plastic cover.

A second Witness for the Tenant states that the police calls have been bogus and that on one occasion when the police were called to an incident where the Tenant was accused of banging on a trailer, the Tenant had been sitting in his trailer quietly visiting the Witness. The Witness states that the Tenant never begs for food but that persons offer the Tenant food. The Landlord states that this Witness once told the Landlord that the Tenant needed to leave the park. The Witness states that he did have a minor problem once with the Tenant but that was resolved and is no longer a problem.

Another Witness for the Tenant, the Tenant’s father, states that the Landlord lies and that the Landlord has called him in the past to ask for the Tenant’s rent, among other things. This Witness states that he wants the Landlord to stop calling him. The Witness states that there is no illegal activities taking place and that while the trailer could use some work, it is liveable and that plans are being made to obtain another trailer.

The Landlord states that the Tenant’s trailer is disintegrating and has two broken windows that have not been fixed. The Landlord states that the Tenant was asked to fix the trailer last year and only one window was fixed. The Landlord states that the trailer is in such bad shape that rats are entering the unit and that the Tenant told the Landlord about the rats.

The Tenant states that he has never received any written or verbal warning about the state of his trailer nor has he ever been notified to repair his trailer. The Tenant denies ever passing out in front of his trailer and that during the summer he was simply laying on his lawn chair. The Tenant states that the Landlord has inappropriately spoke to the Tenant in public about his father paying his rent and that the Landlord never speaks to

the Tenant privately but always in front of others while screaming and yelling at the Tenant. The Tenant states that he did urinate outside on one occasion but that it was not on park property but near the beach where he was attending a party.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Given the Tenant's evidence that the Landlord has never provided any notice to the Tenant about repairing his unit and that the only repairs are in relation to two broken windows and considering that the Landlord did not dispute this, I find that the Landlord has not, on a balance of probabilities, substantiated that the Tenant has not done required repairs to the unit.

Although it appears that the Landlord argues that the Tenant's drug use is the illegal activity causing adverse affects or jeopardizing rights, considering that the Landlord has no supporting evidence from tenants who have moved as a result of the alleged behavior, and considering the Tenants denial of drug use, supported by the other Witnesses, and the Witness evidence that any disputes or disruptions occur are the result of another tenant and that these disruptions occurred several months ago, I find on a balance of probabilities, that the Landlord has not provided sufficient evidence to substantiate that the Tenant has engaged in illegal activity that has caused any adverse affect or jeopardy.

As both reasons have not been substantiated, I find that the Notice is not valid and that the Tenant is entitled to a cancelation of the Notice.

### Conclusion

The Notice to End Tenancy is cancelled and of no effect. 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: November 23, 2012.

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Residential Tenancy Branch