



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Deblyn Trailer Park  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, FF

### Introduction

This hearing was convened by way of conference call in response to the tenants' application to cancel a Notice to End Tenancy for cause; for an Order for the landlord to comply with the *Manufactured Home Park Tenancy Act (Act)*, regulations or tenancy agreement and to recover the filing fee from the landlord for the cost of this application.

The tenants and the landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Are the tenants entitled to have the One Month Notice to End Tenancy cancelled?
- Are the tenants entitled to an Order for the landlord to comply with the *Act*?

### Background and Evidence

The parties agree that this tenancy started about 13 years ago. The pad rent for this site is \$256.00 per month and is due on the 1st day of each month.

The landlord testifies that the tenants were served with a One Month Notice to End Tenancy for cause on May 13, 2013. This notice has an effective date of June 30, 2013 and provides the following reasons to end the tenancy:

- 1) The tenant or a person permitted on the residential property by the tenant has
  - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- 2) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has
  - (ii) Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - (iii) Jeopardized a lawful right or interest of another occupant or the landlord

The landlord testifies that over several years the tenants have had verbal warnings about playing loud music and having noisy dogs which have disturbed other tenants living on the park. The police and animal control officers have been called to the tenants' site concerning noise from the music and the dogs. The landlord testifies she has only received verbal complaints from other tenants as they are reluctant to put complaints in writing.

The landlord testifies that recently on May 06, 2013 the landlord noticed a vehicle with a water tank at the tenants' site. The tenant BF was filling this tank with water from the park and the landlord later determined that this tank held 500 gallons of water. The landlord testifies she approached the tenant about this and the tenant agreed that he was filling the tank for usage at the mines where the tenant worked because of a water shortage there. The landlord testifies that she informed the tenant that he could not take this water and the tenant became mad, pulled the hose out of the tank and the driver got in and drove the vehicle away. The landlord testifies that the vehicle returned later and was also there between May 06 and May 11, 2013 when the tenant continued to fill up the water tank despite the verbal warning to stop.

The landlord testifies that she called the mine and informed them that they could not use water from the park. The landlord testifies that she also called the town, the regional district and the Ministry of the Environment. The landlord testifies that eventually she was directed back to the town who determined that there was a bylaw concerning water usage. The bylaw officer attended at the tenants' site and put a notice and her card on the tenants' door. The bylaw officer also called the mine to inform them of the bylaw. The landlord has provided a copy of the bylaws in evidence along with the Notice provided by the bylaw officer to the tenants.

The landlord testifies that when she returned to her home she found the bylaw Notice crumpled up on her deck. The landlord testifies she called the bylaw officer and was asked if the landlord felt threatened by the tenant. The landlord testifies that the bylaw officer called the Police who then attended at the park to speak with the landlord and the tenant. The landlord testifies that the RCMP officer stayed with the landlord while the landlord served the tenant with the Notice to End Tenancy for fear of repercussions from the tenant. The landlord testifies that after the notice was served the tenant approached the landlord's home but was again spoken to by the RCMP officer who was waiting outside in his vehicle. The RCMP officer then backed his vehicle into an empty lot and turned off his lights. The tenant again approached the landlord's home and started to talk to the landlord however the RCMP officer saw this and walked the tenant home. The landlord testifies that she felt scared and intimidated by the tenant so called a friend to come and spend the night in the landlord's home.

The landlord testifies that it is illegal to take the water and although the tenant did not continue this action after the written notice was given to the tenant on May 11, the tenant had continued to take the water after the verbal warning on May 06. The tenant does not pay for this water and effectively stole the water from the site. The landlord verbally requests that the Notice to End Tenancy is upheld and requests an Order of Possession effective in three months to allow the tenants' time to remove their trailer from the park.

The tenant disputes the landlord's claims. The tenant BF testifies that the written warning states that if the tenant continues to bring a vehicle into the park for the purpose of filling it with water, further action will be taken which could mean an eviction notice could be issued. The tenant testifies that after he received this written warning the tenant did not take any more water from the park. The tenant testifies that the other warning was only verbally given by the landlord. The tenant testifies that this landlord was off work from May to September, 2012 and the interim manager gave the tenant a new set of rules which did not mention anything about water usage.

The tenant testifies that he does not know why the landlord is afraid of him as the landlord had invited the tenant into her home only last month to look at the landlord's kitchen. The tenant testifies that they were unaware of any noise complaints about music or the dogs. The tenant agrees that the police have been called to their site about noise but states that happened ages ago. The tenant agrees that the dog control people have been to the tenants' site just the other day and the tenants were issued with a warning about the dog noise. The tenant testifies that they have dealt with this problem now by taking the dogs to the tenant's brothers when they are at work.

The landlord testifies that while she was off work between May and September, 2012 an interim manager took over the park and did change the rules. The landlord testifies that these rules were not approved by the park owner and were not given to the tenants living on the park. The original rules still apply of which the tenant was given a copy of. The landlord states that the tenant has not provided a copy of any other rules they say this interim manager gave them.

The landlord testifies that in the last week the landlord has received three more complaints about dog noise. One neighbouring tenant had to go and bang on the tenants door at 4.30 a.m. after being kept awake all night by the tenants dogs. The landlord testifies that the loud music was still blaring the night the police were attending the site.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof. I have considered the landlords documentary evidence and verbal testimony and find the landlords evidence more compelling that the tenant did take water from the site after a verbal notice to desist this action. The tenant did not stop this action until the landlord served the tenant with a written warning letter on May 11, 2013. The tenant argues that he was going by a second set of park rules given to the tenants by the interim manager however the tenant has not provided a copy of these rules and could not explain how these rules would have allowed the tenant to remove water from the site. In this event it is the bylaws which are effective concerning the removal of water from the site to a work place rather than the park rules.

In making this decision I must consider what a reasonable person would do in these circumstances with the removal of water from a domestic supply to a work place and whether or not that person would consider this to be a violation of a city or towns bylaws. I find that it was not reasonable for the tenant to not understand that it would be a violation of the bylaws to remove water from a domestic water supply to a work place particularly as the tenant was not paying for the water and due to the considerable amount of water being taken over a period of time. I therefore find these reasons given on the Notice are upheld.

I further find the tenant has caused significant disturbances to other tenants with loud music and loud dogs and by the tenants own admission this has continued despite warnings from the police some time ago and visits by the dog control officers. A tenant must be respectful of their actions concerning noise when living in close proximity to other tenants. As these tenants have not taken heed of any warnings either verbal or written concerning noise I find the reason given on the notice to end tenancy is upheld.

Consequently I dismiss the tenant's application to cancel the Notice to End Tenancy for cause. The landlord has orally requested an Order of Possession at the hearing. Therefore pursuant to s. 55(1)(a) and 55(1)(b) of the *Act* I find the landlord is entitled to an Order of Possession.

With regard to the tenants application for an Order for the landlord to comply with the *Act*, The tenant has not shown that the landlord has not complied with any section of the *Act* therefore this section of the tenants' claim is dismissed.

#### Conclusion

The tenants' application is dismissed in its entirety without leave to reapply.

I HEREBY ISSUE an Order of Possession in favour of the landlord effective on or before September 13, 2013. This order must be served on the Respondents and may be filed in the Supreme Court and enforced as an order of that Court.

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: June 13, 2013

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Residential Tenancy Branch

