



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0909799 BC Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end tenancy for cause.

The landlord and the tenant both attended the hearing, however, due to a language barrier, the landlord remained in attendance but was represented by an agent and did not testify. The landlord's agent also called one witness. The parties and the witness each gave affirmed testimony, and the parties provided evidentiary material to the Residential Tenancy Branch and to each other prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other and the witness on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling a notice to end tenancy for cause?

### Background and Evidence

The landlord's agent testified that this month-to-month tenancy began prior to 8 years ago, and the tenant still resides in the manufactured home park. Rent in the amount of \$300.00 per month for the manufactured home pad is payable in advance on the 1<sup>st</sup> day of each month.

On May 1, 2013 the landlord's agent served the tenant with a 1 Month Notice to End Tenancy for Cause by placing it in the tenant's mail box. A copy of the notice was provided for this hearing, and it is dated May 1, 2013 and contains an expected date of vacancy of June 3, 2013. The reasons for issuing the notice are stated to be:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- 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
  - jeopardized a lawful right or interest of another occupant or the landlord.

The landlord's agent testified that another tenant in the park (a neighbour) was physically attacked twice. A male friend of the tenant (a guest) tore the rails off the neighbour's stairs and threatened the neighbour. Police were called who took the guest away, and the landlord's agent read in the newspaper that the guest was told to leave town. This incident took place a couple of years ago.

On another occasion, another male guest of the tenant attacked the front door of the same neighbour's home and knocked out the light on the front porch and damaged the door. The neighbour is 70 years old and has resided in the manufactured home park in excess of 30 years. The guest also threw 2 lawn mowers off the neighbour's steps, and was subsequently arrested.

The landlord's agent further testified that there have been many noise issues and the tenant wasn't home all of those times. The tenant resides elsewhere and allows others to use the manufactured home. Some of those guests have also been smoking marihuana on the porch.

At the beginning of May this year a neighbour complained about noise coming from the manufactured home at 4:00 a.m. The landlord's agent went to the back of the tenant's manufactured home and upon hearing noise, saw a man on the tin roof of a shed climbing in the window of the tenant's home. The landlord's agent also saw a blond woman who had obviously been drinking and told the landlord's agent that she didn't have a key. The landlord's agent didn't know the woman had been living there. The police were not called.

The tenant was given verbal warnings, and the landlord's agent has been trying to resolve this for about 2 years. A written warning was provided to the tenant on March 8, 2013 and a copy was provided for this hearing. The warning explains that because of incidents on September 11, 2011; December 2, 2012; February 9, 2013; February 10, 2013 and February 17, 2013; any further incidents would result in a notice of eviction.

When asked about illegal activity, the landlord's agent testified that smoking marihuana on the porch of the tenant's home is illegal activity, but no information was provided about who smoked it or when or if it was a continuing activity at the manufactured home.

The landlord's witness testified that in September, 2011 the witness, a neighbour of the tenant, thought someone was on the back porch. The witness opened the door and a drunk person charged toward the witness. The witness closed the door and called 911. The witness saw the person pulling railings off the witness' porch.

The witness also testified that on December 2, 2012 the witness heard a loud noise at 4:00 a.m. and noticed a man throwing the witness' belongings off the front porch. RCMP attended and checked prints in the snow which lead to the tenant's manufactured home. The man was arrested and has not been seen since, and the police said they asked him to leave town. The tenant apologized to the witness.

The witness also testified that the witness has called police about 4 times since 2009.

The tenant testified that since moving to the manufactured home park from another town in 2009 for work purposes, the witness, a neighbour of the tenant, has been bothering the tenant.

With respect to the first incident described by the landlord's agent, the tenant testified that the hand railing on the neighbour's porch was loose to begin with, and the guest is not permitted at the tenant's home due to a peace bond ordered by the Court. The guest was not invited by the tenant but located the address from a directory, and the tenant called the police. The tenant further testified that the tenant has apologized to the neighbour, who accepted the apology.

The tenant further testified that the tenant's home has been broken into twice. On no occasion did anyone call the police even though the tenant wasn't at home. No blond woman has a key to the tenant's home.

The tenant has to abide by Ministry of Social Services rules in order to have a secure home for the tenant's grandchild. Those rules include no alcohol or drugs, and when police are called, the Ministry is also called. The tenant has a temporary custody order, and provided a copy of an application made by the Ministry for an extension of the custody order for this hearing. Further, the tenant can't smoke or drink for fear of seizures.

The tenant has also provided a written log of incidents, and read from that log while under affirmation. The tenant also testified that the tenant has complained about the neighbour to the management of the manufactured home park. The incidents described date back to October, 2009 when the tenant first moved into the park, and include being yelled at by the neighbour for noise during the day, or being yelled at when the baby cries. The neighbour bangs on the walls late in the evening waking the baby, and the child cannot play outside, returning to the inside of the home crying saying that the neighbour got mad.

The tenant also testified that in October, 2012 the tenant returned home to discover that the tenant's window had been broken, but no one called police.

The tenant does not reside elsewhere, but has gone to another city to visit for a lengthy period of about 6 weeks after losing family members, for support from other family members. The tenant did not allow others to reside at the manufactured home during that time, but had another relative check the home for its safety.

In November, 2012 the Ministry paid a visit to the tenant stating that the neighbour had called and accused the tenant of beating the child, but no evidence of such was found. The neighbour had called police but they refused to attend because the neighbour had made too many calls in the past.

The tenant asks that the notice to end tenancy be cancelled.

### Analysis

The *Manufactured Home Park Tenancy Act* states that a tenant who is served with a 1 Month Notice to End Tenancy for Cause must dispute the notice within 10 days of service or is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, which must be no earlier than 1 month after the date rent is payable. In this case, I find that rent is payable on the 1<sup>st</sup> day of the month. The tenant was served with the notice by placing it into the mailbox on May 1, 2013. A notice served in this manner is deemed to have been received 3 days later. Therefore, the effective date of the notice cannot be earlier than June 30, 2013, and I find that the date is automatically changed to June 30, 2013 pursuant to Section 46.

I further find that the tenant has filed the application for dispute resolution within the 10 days required under the *Act*.

With respect to the reasons for issuing the notice, I am not satisfied that the landlord has established that the tenant has engaged in any illegal activity. The tenant testified

that the tenant cannot smoke or drink for fear of seizures, and the landlord has not provided any testimony or evidence to satisfy me that the tenant was aware of marihuana being smoked on the tenant's porch if it was at all.

With respect to the other reasons set out in the notice to end tenancy, when a tenant disputes such a notice, the onus is on the landlord to establish the reasons for ending the tenancy. In this case, the only incidents described by the landlord's agent and the landlord's witness are with respect to one neighbour. After the first incident described by the landlord's agent, the witness and the tenant both testified that the tenant apologized for the guest's behaviour and the witness accepted that apology.

I further note that the testimony of the landlord's agent refers to incidents that have taken place in excess of 2 years ago. The warning letter the landlord's agent gave to the tenant states that there were incidents on September 11, 2011, December 2, 2012 and on 3 dates in February, 2013. I have concerns about evicting a tenant for incidents that happened 2 years ago, especially when no incidents took place for in excess of a year after that. Neither the landlord's agent nor the landlord's witness explained about any incidents that took place in February, 2013, and I have no evidence before me that the tenant was responsible for any disturbances during that month. The landlord's agent also testified that the tenant resides elsewhere and allows others to use the manufactured home, which is also disputed by the tenant.

Where a tenant disputes the cause referred to in a notice to end tenancy, the onus is on the landlord to prove the cause. I find, in the circumstances, that the word of the tenant's neighbour is no more believable than the tenant's version of events.

### Conclusion

For the reasons set out above, the notice to end tenancy issued on May 1, 2013 is hereby cancelled.

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 06, 2013

---

Residential Tenancy Branch