



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC, FF

### **Introduction**

This Application for Dispute Resolution by the tenant was seeking to cancel a One-Month Notice to End Tenancy for Cause dated June 28, 2013, a copy of which was submitted into evidence.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the relevant testimony and evidence that was properly served.

### **Issue(s) to be Decided**

Should the One Month Notice to End Tenancy for Cause be cancelled?

### **Background and Evidence**

The tenancy began in 2002 and the pad rent is \$365.00.

Submitted into evidence was a copy of the One-Month Notice to End Tenancy for Cause dated June 28, 2013. The tenant testified that this Notice was not served on the tenant until July 6, 2013.

The Notice indicated that the reason for terminating the tenancy was that the tenant had breached a material term of the tenancy and failed to correct the situation within a reasonable time after written notification to do so.

The landlord testified that the tenant has persistently neglected the upkeep of both the pad and the structure of his manufactured home. The landlord testified that this is

contrary to a provision in the tenancy agreement that requires renters to keep their pad site tidy at all times. According to the landlord, the tenant has repeatedly allowed the lawn to become overgrown and this creates a situation where the landlord has had to contact the tenant to insist that he comply with the park rules and pad agreement. The landlord stated that they never receive any acknowledgement or other response from the tenant.

The landlord stated that, in addition to the above, the tenant apparently does not reside in the unit, but merely uses it for storage, and this is obvious to other park residents, who often refer to the site as “the black hole”. The landlord testified that there are also some concerns that the building is sagging and that the windows show water condensation from the inside.

The landlord testified that they discovered that the tenant had not placed insurance on the home, as required on the pad agreement and once he finally produced proof of the insurance, the landlord noted that it required the tenant to live on site.

The tenant testified that his home is structurally sound and he has already made arrangements for consistent lawn upkeep for the future. The tenant testified that he also obtained the insurance required and provided a copy of the policy confirmation in evidence. The tenant stated that he is now in the process of cleaning out the manufactured home to place it up for sale. According to the tenant, he feels as if the landlord is intent upon harassing him and he stated that he wants to terminate the tenancy relationship as soon as possible.

When asked if he was willing to provide the landlord with a report from an inspector to prove that his manufactured home is fit for habitation, the tenant stated that he was not willing to incur the expense and inconvenience. The tenant pointed out that the onus is on the landlord if they wish to establish this fact by proving their allegations are founded.

The landlord was asked whether or not they were willing to arrange an inspection at their own cost, to assure themselves that the tenant's property was safe and poses no danger to the other residents of the park. However, the landlord declined.

### **Analysis**

I find that the verbal testimony from the landlord was challenged by the tenant.

In regard to the cause put forth warranting termination of the tenancy under section 40(1)(g)(i) and 40(1)(g)(ii) of the Act, for a breach of a material term of the tenancy and failure to correct the situation within a reasonable time after being notified in writing, I find that the landlord carries burden of proof.

To establish that a breach of a material term in the tenancy has occurred entails satisfying the Dispute Resolution Officer that the following three components exist:

- There must be a clear term contained in the tenancy agreement,
- This term must fit the definition of being “*material*”,
- There must be a genuine breach of the material term.

Determining the materiality of a term requires a focus upon its importance in the overall agreement and it falls on the person relying on the term to present evidence that it qualified as a material term to both of the parties signing the agreement at the time.

(my emphasis)

A material term is a term that the parties had both agreed was so important that the most trivial breach of that term would give the other party the right to end the agreement and the question goes to the root of the contract.

I find that none of the alleged violations brought up by the landlord would qualify as a breach of a material term.

Moreover, I find that the landlord’s allegations, even if accepted, would not likely meet the threshold as a valid basis for terminating this tenancy.

In any case, the tenant had complied with the landlord’s request to ensure that the lawn was maintained and to produce insurance.

With respect to the landlord’s observation that the manufactured home appeared to be abandoned, unkempt and structurally compromised, I find that the landlord failed to produce sufficient evidence to prove these allegations.

Based on the evidence, I find that the One-Month Notice to End Tenancy for Cause is inadequately supported by evidence, and must be cancelled.

Accordingly, I order that the One Month Notice to End Tenancy for Cause dated June 28, 2013, is hereby cancelled and of no force nor effect.

I also order that the parties must restrict all communications to written form and refrain from contact in person or by telephone unless necessary.

I find that the tenant is entitled to be reimbursed the cost of this application and hereby order the tenant to deduct \$50.00 from the next rental payment due to the landlord.

**Conclusion**

The tenant is successful in the application and the One-Month Notice to End Tenancy dated June 28, 2013, is 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: August 14, 2013

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Residential Tenancy Branch