



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

The tenants apply to cancel a one month Notice to End Tenancy dated July 30, 2014, served August 2, 2014.

### Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that any of the grounds founding the Notice have been substantiated?

### Background and Evidence

The manufactured home site is one of fifty five in the park. The tenancy started in June 2003. The monthly rent is currently \$509.89. The respondent is actually the park manager, working for the owners. He has been in the park since 2006. He issued the Notice listing himself as the landlord. The written tenancy agreement discloses that the landlord, at least in 2003, was a limited company.

The Notice alleges two grounds for eviction. It claims that the tenants or a person permitted on the property by them has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. Secondly, it claims that the tenants have 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.

Proof establishing either of these grounds is a lawful reason for eviction under s. 40(1) of the *Manufactured Home Park Tenancy Act* (the "Act").

The respondent Mr. J.S. alleges that the tenant has failed to properly maintain his yard and that it presents a significant risk to the landlord in the event that someone is injured there and claims the landlord is at fault. Secondly, Mr. J.S. alleges that the tenant Mr. J.S. threatened and attempted to assault him on July 16, 2014.

The tenant Mr. J.S. testifies that his yard was properly maintained at the time in question. He admits to a confrontation with the respondent on the day in question and to the touching of the door handle of the van the respondent was sitting in.

Collaterally, the respondent gave evidence about the fact that the tenant has an "RV" or motorhome parked in his driveway and that it is against park rules to do so. The tenant Mr. J.S. denies being bound by the rules as they weren't part of his tenancy agreement and he's never seen them. The respondent says he's offered a copy to the tenants but it was declined.

### Analysis

On the evidence presented, most particularly the photos submitted by the respondent, I find that on May 7, 2014, the day the respondent issued a warning order regarding the tenants' yard, the yard was overgrown. It may well be that the tenants were actively improving the yard after replacing their previous, fire damaged, home.

I find that the condition of the yard has not been shown to pose a danger to anyone or that it seriously jeopardized the health or safety of anyone. That ground for the Notice fails.

The allegation of a threatened assault is much more serious. It is apparent that since at least May 2014 the tenant has been greatly agitated by what he perceives to be the domineering, order giving respondent and the park rules he does not agree with or feel bound by and that he deals with his agitation through anger.

In regard to the park rules, it is the respondent's undisputed evidence that the rules have been in effect since before he arrived in 2006, but for a clause 23 dealing with RV storage, which he added after his arrival.

Manufactured home park tenants are bound by park rules made in accordance with the *Act* and the Manufactured Home Park Regulation. Section 32 of the *Act* provides:

**Park rules**

32 (1) In accordance with the regulations, a park committee, or, if there is no park committee, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.

(2) Rules referred to in subsection (1) must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park.

(3) Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable.

(4) If a park rule established under this section is inconsistent or conflicts with a term in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict.

There is no park committee in this park.

The foregoing section indicates that it not a requirement that a landlord have a tenant's agreement before imposing a rule and indeed, a landlord may establish, change or repeal rules after a tenancy starts.

A landlord's power in making park rules is limited by the Regulation made under the *Act*. The relevant portions provide:

**Part 4 — Park Rules**

**Disclosure**

29 (1) Prior to a person's entering into a tenancy agreement with a landlord, the landlord must disclose in writing to that person all rules in effect at the time of his or her entering into the tenancy agreement.

(2) Subsequent to a tenant's entering into a tenancy agreement with a landlord, the landlord must give notice in writing to that tenant of any rule at least two weeks before the rule becomes effective.

**Making rules**

30 (1) The park committee or, if there is no park committee, the landlord, may establish, change or repeal a rule **if it is reasonable in the circumstances** and if the rule has one of the following effects:

**(a) it promotes the convenience or safety of the tenants;**

- (b) it protects and preserves the condition of the manufactured home park or the landlord's property;**
- (c) it regulates access to or fairly distributes a service or facility;**
- (d) it regulates pets in common areas.**

(2) If there is a park committee, the rules must be established, changed or repealed according to the procedure set out in sections 22 [park committee decisions] and 23 [vote by landlord and tenants].

(3) A rule established, or the effect of a change or repeal of a rule changed or repealed, pursuant to subsection (1) is enforceable against a tenant only if

- (a) the rule applies to all tenants in a fair manner,
- (b) the rule is clear enough that a reasonable tenant can understand how to comply with the rule,
- (c) notice of the rule is given to the tenant in accordance with section 29 [disclosure], and
- (d) the rule does not change a material term of the tenancy agreement.

*(my emphasis)*

It should be noted that in my view, if a tenant is violating a park rule, a landlord's normal course of action would be to apply for a compliance order. If a tenant failed to comply with an arbitrator's order, the landlord may issue an eviction notice under s. 40(1)(k) of the *Act*. As the alleged breach of park rules is not a clear ground for this eviction Notice, I make no comment on whether the park rules in question are in accord with Regulation 30(1), above.

Returning to the July 16<sup>th</sup> incident, I accept the respondent's version of events. Though this hearing was conducted by telephone, the respondent impressed me as a moderate, peaceable sort who has the best interests of the park's occupants foremost in his mind. Unfortunately, the tenant Mr. J.S.'s undisputed action of tearing up and throwing away the respondent's warning letter of May 7 and the character revealed by the phone message of July 30, show him to be hostile.

I do not consider that the tenant's aggressive behavior July 16<sup>th</sup> was "illegal" in the sense used in s. 40(1)(d) of the *Act* though it clearly had the possibility to jeopardize the health or safety of the respondent. I consider it to have been a case of lost temper based on a misperceived abuse of authority by the respondent. The respondent's side comment that the tenant would undoubtedly have come out the loser in a physical altercation satisfies me that though there was the slight possibility of a physical altercation had the respondent not closed his windows, locked his door and driven away, the incident on July 16<sup>th</sup> did not seriously jeopardize the health or safety of the respondent. I find this ground for eviction fails.

The tenant is forewarned however. He is bound by the park rules he has been given lawful notice of. Should he feel a rule is not "reasonable in circumstances" or does not

meet the other requirement of s. 30(1) of the Regulations, above, he may apply to have the question determined. He must conduct himself civilly as a manufactured home park tenant. Continued aggressive conduct on his part could easily reach a level justifying eviction should it be shown to seriously jeopardize the health or safety of another park occupant or the landlord, including the respondent

### Conclusion

The tenant's application is allowed. The Notice to End Tenancy dated July 30, 2014 is set aside and cancelled. The conduct of the tenant warrants against awarding recovery of the filing fee.

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: October 03, 2014

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Residential Tenancy Branch

