



# 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 as a result of the Tenant's application for dispute resolution under the *Manufactured Home Park Tenancy Act* (the "Act") for an Order canceling a Notice to End Tenancy given for cause.

The Landlord, G.B., her daughter, M.B., as well as a witness, Constable C.M., appeared on behalf of the Landlord. The Tenant appeared and was assisted by an advocate, N.C.

The hearing process was explained and the participants were asked if they had any questions. All participants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

Should the Notice to End Tenancy given for cause be cancelled?

### Background and Evidence

The Tenant owns a manufactured home which is located in a manufactured home park of approximately 25 sites owned by the Landlord. The Landlord confirmed that no tenancy agreement existed. Further, there was no evidence of any Park Rules.

The Landlord alleged that the Tenant has four people living in his manufactured home, and two living in an unauthorized outbuilding which she referred to as the "shed". According to the Landlord, one of the occupants of the shed is the Tenant's grandson.

The Landlord further alleged that the shed did not have any plumbing or water facilities, but that the tenant has rewired the shed and plugged it into the main breaker.

The Landlord testified that on January 27, 2015 the municipal bylaw inspector gave notice to the Tenant to "correct the situation". She did not provide a copy of the notice in evidence or clarify the "situation" requiring correction.

The Landlord also alleged the Tenant was involved in illegal activity. She stated that the police regularly attend the Tenant's manufactured home site and that for this reason, as well as the foregoing, she issued a Notice to End Tenancy.

Introduced in evidence by the Tenant, was a copy of the 1 Month Notice to End Tenancy which was dated both March 4, 2015 and March 5, 2015; similarly, the effective date of the Notice was difficult to read, as various dates appear to have been written on it, however, the most prominent date was April 4, 2015 (the "Notice").

The Tenant confirmed that he was personally served the Notice on March 5, 2015.

The reasons noted on the Notice were as follows:

1. The Tenant has allowed an unreasonable number of occupants in the unit/site.
2. The tenant, or a person permitted on the property by the tenant has:
  - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - c. Put the landlord's property at significant risk.
3. Tenant has engaged in illegal activity that has, or is likely to:
  - a. Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

4. Tenant has assigned or sublet the rental unit/site without landlord's written consent.

Also introduced in evidence was a 1 Month Notice to end Tenancy for Cause issued March 3, 2015 with an effective date of April 2015 (note date was given).

Initially the Landlord testified that the Tenant was served the Notice personally on March 3, 2015. When it was brought to the Landlord's attention that the Notice introduced in evidence by the Tenant in support of his application was dated March 4 or 5 2015, the Landlord stated the Tenant was served on March 5, 2015.

The Tenant confirmed that he did not receive the March 3, 2015 Notice which was introduced in evidence by the Landlord.

In terms of the 1st reason cited on the Notice, the Landlord submitted in evidence a document titled "Guest Registration", which she submitted restricted the number of occupants in the manufactured home to 1.

In terms of the 2<sup>nd</sup> reason cited on the Notice, the Landlord introduced in evidence two letters which purport to be written by fellow occupants of the manufactured home park. One letter was undated and signed "sincerely a concerned tenant" [reproduced as written]. The other letter, dated February 27, 2015 was unsigned and appeared to be incomplete.

The Landlord called Constable C.M. as a witness. He confirmed that while the police have attended the manufactured home park on numerous occasions, they do not attend as a result of the Tenant's or his guest's behaviour.

Constable C.M. provided details of a "raid" which occurred on March 18, 2015 at the manufactured home park. He confirmed he was not in attendance on that date, and did not know whether the Tenant's manufactured home was searched at that time. When I asked the Constable if any of the persons arrested on that date were occupants of the Tenant's manufactured home, he responded that he did not believe so.

Constable C.M. testified that the police attended the rental site in May of 2014 relating to an allegation of possession of stolen property and in January of 2015 when the police escorted the city bylaw inspector during an inspection of the shed.

The Tenant introduced a signed and dated letter from his neighbour, R.C., who wrote in support of the Tenant. The Tenant also introduced another signed letter from his neighbor, S.F., who also wrote in support of the Tenant.

The Landlord also alleged that the Tenant has put the landlord's property at significant risk because the Landlord alleges the Tenant has allowed people to live in the shed.

The Tenant testified that the shed was in existence when he moved to the manufactured home park and that the electricity was also hooked up to the shed at that time. He denies that anyone lives in the shed, rather he stated that his grandson uses the shed as a place to watch television.

The Tenant further testified that he does not have four people living in the manufactured home, but rather that he lives with his son and grandson and has done so for many years. He testified that his son is mentally disabled and the Tenant is physically disabled such that they rely on each other for assistance and support.

The Tenant confirmed that that while the police did attend his residence to investigate a stolen bike, the bike was not on his property. He also confirmed that the police attended with the bylaw enforcement officer who instructed him to clean up garbage. He stated that other than those two instances, the police have not attended his manufactured home site.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The Tenant applied, pursuant to section 40(4) of the *Act* for an order setting aside the Notice. The Landlord bears the onus of proving the Notice should be upheld.

In terms of the 1st reason cited on the Notice, the Landlord submitted in evidence a document titled "Guest Registration", which she submitted restricted the number of occupants in the manufactured home to 1.

In a manufactured home park, a Landlord cannot restrict the number of occupants unless permitted by the *Act*, the tenancy agreement or the Park Rules. The Guest Registration submitted in evidence is not a tenancy agreement and does not restrict the number of guests to "1" as alleged by the Landlord. Accordingly, I find that the Landlord

has no such authority and as such, has failed to prove that the Tenant has an unreasonable number of occupants on the manufactured home site.

In terms of the 2<sup>nd</sup> and 3<sup>rd</sup> reasons cited on the Notice, I find that the Landlord has failed to prove that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord or that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, or that the Tenant has engaged in illegal activity which adversely affects others.

The Landlord did not submit any evidence from the municipality with respect to the alleged inspection of the shed.

Further, the letters submitted by the Landlord are unsigned and therefore of no probative value.

On the other hand, the evidence submitted by the Tenant from his neighbours refutes the Landlord's claims and supports a finding that the Tenant has positive interactions with the other occupants of the manufactured home park.

Constable C.M. confirmed that a television and bed were located in the shed. Notably, the Landlord did not provide any photos of the shed. I accept the Tenant's evidence that his grandson uses the shed to watch television and that no one is living in the shed as alleged by the Landlord.

While it is the case that this application was made under the *Manufactured Home Park Tenancy Act*, assistance can be found in the Residential Tenancy Policy Guideline 32—Illegal Activities, which provides that the party alleging the illegal activity has the burden of proving that the activity was illegal. In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlords' property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.

Policy Guideline 32 further provides that, "[t]he illegal activity must have some effect on the tenancy... A tenant may have committed a serious crime such as robbery or physical assault; however, in order for this to be considered an illegal activity which justifies issuance of a Notice to End Tenancy, this crime must have occurred in the rental unit or on the residential property".

The Landlord's witness, Constable, C.M testified that the RCMP routinely visit the manufactured home park. He could not confirm whether the Tenant or his guests were involved in any illegal activity. Further, there was no evidence that the alleged illegal activity affected or was related to the tenancy. At best, C.M.'s evidence supports a finding that there is potential criminal activity at the manufactured home *park*, but his evidence fell short of supporting a finding that the Tenant, or his guests were involved in such alleged illegal activity.

In terms of the 4<sup>th</sup> reason cited on the Notice, as the Tenant remains in occupation, he cannot be said to have assigned or sublet the rental unit/site without the landlord's written consent.

For all of the above reasons I find that the Landlord has failed to prove the Notice should be upheld. The Notice is cancelled and the Tenancy will continue until ended in accordance with the *Manufactured Home Park Tenancy Act*.

#### Conclusion

The Landlord has failed to establish cause for ending the tenancy. Therefore I order that the Notice is set aside.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: May 06, 2015

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Residential Tenancy Branch

