



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VANCOUVER EVICTION SERVICES and 1027110 BC. LTD.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “Notice”), and to recover the filing fee from the Landlords.

The Tenant appeared for the hearing with an advocate. An agent for the Landlords appeared for the hearing with the manufactured home park manager. The Tenant’s advocate also called a witness during the hearing. The Tenant’s advocate made submissions on her behalf and the remaining participants provide affirmed testimony.

The Landlords’ agent confirmed that the Landlords had received the Tenant’s Application by registered mail, pursuant to Section 82(1) (c) of the *Manufactured Home Park Tenancy Act* (the “Act”). The Tenant provided a copy of the Notice into evidence prior to the hearing. The Landlord confirmed that no documentary evidence had been provided by the Landlords for this hearing and that they were relying solely on oral evidence to prove the Notice.

The hearing process was explained and no questions were asked of the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party and the witness on the evidence provided.

At the start of the hearing, the Landlords’ agent explained that the parties had appeared for another hearing that took place on August 31, 2015, the file number for which appears on the front page of this decision. This hearing was in response to the Landlords’ Application to end the tenancy early. The Landlords’ agent explained that during that hearing the Tenant was too emotional. Therefore, the Application was withdrawn to allow the parties to come to mutual settlement on the matter. The Landlord’s agent explained that he had made attempts to resolve this Application with the Tenant in the interim time. However, the attempts were unsuccessful.

Issue(s) to be Decided

Is the Tenant entitled to cancel the Notice?

### Background and Evidence

Both parties confirmed that this tenancy started in July 2014 on a month to month basis. A written tenancy agreement was completed which established rent for the manufactured home site (the "site") at \$560.00 payable on the first day of each month. The parties confirmed that there were no rental arrears in this tenancy.

The Tenant confirmed receipt of the Notice dated July 24, 2015 on the same date. The tenant made the Application to dispute the Notice on July 29, 2015. The Notice provided into evidence was issued to the Tenant for the following reasons:

- 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; and
  - put the landlord's property at significant risk.
- 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; and
  - jeopardize a lawful right or interest of another occupant or the landlord.

The Landlord's agent testified that the reasons for the Notice related to one incident which took place on June 23, 2015. The Landlords' agent testified that the Tenant had an altercation with the occupant's mother of the neighbouring home. During this altercation the Tenant's son stepped in and assaulted the neighbour's mother. The police were called and the Tenant's son was arrested and criminally charged. The Landlords' agent testified that the criminal case was being progressed in the courts.

The Landlords' agent submitted that the Tenant's neighbour and the neighbour's mother, who both resided together, feared so much for their safety that they quickly had to vacate the Park after hastily selling their home. The Landlords' agent submitted that he was seeking an Order of Possession for the rental site because the Landlords fear that they cannot take liability for another incident like this.

The park manager testified that she had received a phone call from the Tenant's neighbour on the date of the incident informing her that the Tenant's son had attacked

the neighbour and her mother and that the police had been called. The park manager testified that she was informed by the Tenant's neighbour that the Tenant's son had uttered threats and had tried to break down their home door.

The park manager was asked whether she had visited the scene after she was informed of the altercation by the Tenants' neighbour or whether she had witnessed the altercation take place. The park manager replied that she did not to both questions.

The Landlords' agent testified that after being arrested by the police, the Tenant's son was ordered to have no contact with the neighbour. The Landlords' agent testified that on the same day of the altercation, they had to have the park security pay particular attention to the Tenant's neighbour's home as the neighbour feared for her safety. The Landlord's agent confirmed that no further altercations took place between the parties after this incident.

The Landlords' agent explained that due to the fear felt by the neighbour of the Tenants' son, the neighbour sold her home and vacated the Park on July 20, 2015. As a result, the Landlords lost rent revenue.

The Tenant's advocate pointed out that the Landlords had failed to provide any documentary evidence to support the oral testimony and neither was there any witness evidence. The Tenant's advocate stated that the Landlord was relying on hearsay evidence to prove the Notice. The Tenant's advocate submitted that the Landlords are seeking to end the Tenant's tenancy because they are in the process of developing the park and this is the real motive behind the issuing of the Notice.

The Tenants' advocate confirmed that the Tenant's son resides in the same home. While the Tenant testified that her son had been criminally charged for an offense, the Tenant testified that this charge was not for assault on the neighbour. The Tenant's advocate submitted that after the Tenant's son was arrested he was released to go back to his home which he did. The Tenant's advocate pointed out that in the altercation it was the Tenant that was the victim. In support of this, the Tenant called a witness who is a resident in the same park.

The witness testified that after hearing screams in the park, she observed the Tenant's neighbour and the neighbour's mom attacking the Tenant after which the police were called. The witness testified that she saw the Tenant's neighbour on top of the Tenant pounding her with her fist.

The Tenant's advocate submitted that the neighbour's tenancy had not ended because she feared for her safety but it was ended because the Landlords refused the neighbour's request to sublet the site. The Tenant's advocate disputed the Landlords' agent's claim that the Landlords had lost rent revenue, submitting that the neighbour's home was demolished shortly after she had vacated it.

The Landlords' agent cross examined the Tenant's witness and asked what date she had witnessed this incident. The witness was unable to recall the exact date but testified that it was at some point this summer. The Landlords' agent questioned the witness whether she had seen another altercation than the one in question and asked whether she had seen the police who were called to the incident in question. The witness confirmed that she observed the police attend to the incident she had witnessed and was testifying to.

The Landlords' agent confirmed that the Landlords took over the park at the start of 2015 and were in the process of changing the use of the park. The Landlords' advocate explained that the Landlords had purchased some homes in the park. However, they had also ended tenancies for other homes, but this was done correctly for those sites that had breached the Act, as was the case here.

The Landlords' agent submitted that there was no dispute that the Tenant's son had been criminally charged with an offence and therefore, this tenancy had to end. The Landlords' agent was asked whether any other incidents had occurred with the Tenant's son to which he replied no. However, the park manager stated that the Tenant and her son had caused trouble with other residents in the park. However, the park manager confirmed that she had no evidence of this.

The Landlords' agent also explained that the neighbour had not testified for this hearing because she was still in fear for her safety.

The Landlord's agent disputed the Tenants' agent's claim that the Landlords had refused consent for the neighbour to sublet the site. Instead the Landlord's agent explained that the remaining lease for the neighbour's site was too short to re-rent but that the Landlords still incurred revenue losses as a result of the tenancy ending the way it did.

### Analysis

In relation to the Notice, I find the format and content of the Notice complied with Section 45 of the Act. I also accept the parties' evidence that the Tenant was served

with and received the Notice on July 24, 2015. The Tenant made the Application to dispute the Notice on July 29, 2015. Therefore, I find the Application was made within the 10 day time limit stipulated by Section 40(4) of the Act.

When a landlord issues a tenant with a Notice for the reasons in this case, the landlord bears the burden of proving the reasons on the Notice disputed by the tenant. In this case, the Landlords relied solely on oral evidence to prove the reasons on the Notice. The oral evidence was disputed by the Tenant.

The Landlords provided no documentary or supporting evidence to back up the reasons stipulated on the Notice. The Landlords also rely on one incident that took place on June 23, 2015. Even though the parties acknowledged that there was an altercation that took place on June 23, 2015, I find the Landlords provided insufficient details of the altercation which was disputed by the Tenant's witness that would suggest that the Tenant and her son continue to pose a threat to the park residents.

I find the Landlords failed to prove the altercation that took place on June 23, 2015 was part of a series of events that led to the issuing of the Notice. Neither I am satisfied the Tenant and her son are causing fear to other residents as there is no corroborating evidence to back this allegation. I also find that there is insufficient evidence before me to suggest that the neighbour or the neighbour's mother were unable to appear for this hearing due to a fear of the Tenant and her son, as the neighbour and her mother have since left the park. Taking into account that there was one incident which took place in June 2015, and that no further incidents have occurred since this time, I find that the Landlords' agent's submission that they fear and anticipate further incidents lacks merit. Rather, I accept the Tenant's advocate's submission that the Landlords are motivated in ending the tenancy for other reasons; these reasons being the Landlords are in the process of changing the use of the park which was confirmed by the Landlords' agent.

I find the park manager's testimony was mainly hearsay evidence and this evidence was disputed and contradicted by the direct evidence provided by the Tenant's witness who saw the incident take place and confirmed that the Tenant was a victim in the altercation. The park manager also provided no evidence to support her allegation that the Tenant and her son pose a threat to park residents.

I also find that the Landlords presented insufficient evidence of how the Tenant's neighbour's tenancy had ended. Therefore, there is not sufficient evidence before me to show that the neighbours ended their tenancy and vacated the park solely on the basis of the altercation that took place in June 2015. As a result, I am unable to determine the losses the Landlord's advocate claimed that the Landlords had incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim must fail.

In this case, I find that the Landlord's allegations are not supported or corroborated in a way that they can be relied on for me to uphold the Notice. I find that the lack of any documentary evidence such as witness evidence, resident complaint letters, video footage, or photographic evidence, does not convince me that the Landlord has met the burden of proof in this case. I find the Landlords' evidence is no more compelling than the Tenant's evidence and Landlord has not proved the Notice.

As a result, I cancel the Notice issued to the Tenant dated July 24, 2015. The tenancy will continue until it is ended in accordance with the Act. As the Tenant has been successful in cancelling the Notice, pursuant to Section 65(2) of the Act, the Tenant may recover the \$50.00 filing fee by deducting it from a future installment of rent. The Tenant may want to provide a copy of this decision when making the rent payment.

### Conclusion

The Landlord has failed to meet the burden to prove the Notice. Therefore, I cancel the Notice dated July 24, 2015. The tenancy will continue until it is ended in accordance with the Act. The Tenant may recover the filing fee from a future installment of rent.

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 06, 2015

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Residential Tenancy Branch

