



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROYAL CANADIAN LEGION #69  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            CNC, FF, O

### Introduction

This hearing was convened by way of conference call in response to the tenants' application for an Order to cancel a One Month Notice to End Tenancy for Cause; other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenants and agents for the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

### Issue(s) to be Decided

Are the tenants entitled to an Order cancelling the One Month Notice to End Tenancy?

### Background and Evidence

The parties agreed this month to month tenancy started on January 01, 2014. Rent for this unit is \$1,000.00 per month due on the 1<sup>st</sup> of each month.

The landlord's agent BH testified that it was brought to his attention that the fifth wheel parked at the rental unit belonged to a person other than the tenants. This person informed BH that he could not move the fifth wheel as the tenants had blocked him in and had told BH he owed

\$900.00 in rent to the tenants. This person also informed BH that he had paid \$1,100.00 in past rent to the tenants. BH testified that the tenants are not allowed to sublet their rental unit or site and so he gave the tenants a letter on August 24, 2015 informing them they must release the fifth wheel by August 26, 2015 and desist from subletting. The landlord has not provided a copy of that letter in documentary evidence.

BH testified that the fifth wheel remained at the rental unit and on the evening of August 26, 2015 an executive meeting took place and it was decided that the tenants would be served with a One Month Notice to End Tenancy for Cause. A copy of this Notice has been provided in documentary evidence. This Notice is dated August 31, 2015 and has an effective date of September 30, 2015. The Notice was posted to the tenants' door and gave the reason to end the tenancy was because the tenants had assigned or sublet the rental unit/site without the landlord's written consent.

The landlord orally requested an Order of Possession effective on November 30, 2015.

The tenants disputed the landlord's claims. The tenant PC testified that they had not been subletting space for the fifth wheel. When the owner of the fifth wheel came to the tenants he told the tenants he did not have any money for storage of his fifth wheel and so the tenants let him park it at the rental unit without any charge. This occurred in the summer of 2014 and the tenants thought the landlord was aware of this as the owner of the fifth wheel had it plugged into the Legion's electricity supply.

PC testified that he has no idea why this person would tell BH that he owed the tenants \$900.00 in rent or that he had paid \$1100.00 in past rent. If he had paid rent to the tenants they would have given him a rent receipt as they get one from the landlord when they pay their rent. PC testified that the owner of the fifth wheel came to the tenants and said he needed to get his fifth wheel out as he had found a place and it was moved on August 29, 2015.

PC testified that he did get the letter from the landlord asking for it to be moved by August 26, 2015 however the tenants had borrowed a truck from another friend to fill with garbage from their yard. This friend had gone out of town and did not leave the keys to his truck and neither of

the tenants is allowed to drive that truck. The truck was blocking the way so the fifth wheel could not be moved by August 26, 2015.

PC testified that the owners of the fifth wheel never lived in it. It sat unoccupied over the winter of 2014/15 and only their pets were left there when they were working. Another friend who was also a friend of the owner of the fifth wheel asked them to stay in her house and look after her house and pets while she was away working. The owners of the fifth wheel may have spent an occasional night sleeping in the fifth wheel if they had drunk too much to be able to drive home.

BH asked the tenants if the owners of the fifth wheel ever spent more than three consecutive nights in the fifth wheel. PC responded, never.

The tenants declined to cross examine the landlord.

BH testified that he is aware the owners of the fifth wheel lived there as BH had visited them there for coffee on more than one occasion in the summer and fall of 2014 but he was not aware at that time that they were paying rent. The landlord referred to a statement provided in evidence which has been signed by the landlord's agents and the owner of the fifth wheel.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The landlord has provided a statement dated September 11, 2015 in documentary evidence. This statement alludes to the payment of rent made by the owner of the fifth wheel and how it was blocked in by a truck and could not be removed from the rental unit; however, the landlord has not called the owner of the fifth wheel to the hearing to give sworn testimony or submit to

cross examination. I find therefore that the statements made in this documentary evidence carry little weight.

It is important to note that 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 fails.

Consequently, in the absence of any corroborating evidence from the landlord, I find that the landlord has not provided sufficient evidence to show that rent was paid for the fifth wheel or that the tenants sublet or assigned any part of the rental property and that the arrangement for the fifth wheel was that it could simply be parked at the rental unit.. Therefore, the landlord has not met the burden of proof that grounds exist to end the tenancy and as a result, the Notice is cancelled and the tenancy will continue.

### Conclusion

The tenants' application is allowed. The one Month Notice to End Tenancy for Cause dated, August 31, 2015 is cancelled and the tenancy will continue. As the tenants have been successful in setting aside the Notice, they are entitled to recover their **\$50.00** filing fee for this proceeding and may deduct that amount from their next rent payment when it is due and payable to the landlord.

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: November 05, 2015

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Residential Tenancy Branch

