



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the *Manufactured Home Park Tenancy Act* (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on September 19, 2015.

Both parties appeared, gave 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 at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice issued on September 19, 2015, be cancelled?

### Background and Evidence

The tenancy began on March 31, 2003. Current Rent in the amount of \$336.44 was payable on the first of each month.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on November 1, 2015.

The reason stated in the Notice was that the tenant has:

- Put the landlord's property at significant risk.

The landlord testified that the tenant has a heating oil tank that is putting the property at significant risk. The landlord stated that the tenant must carry environmental hazard insurance or they need to change their heat source to propane or wood.

The landlord testified that because the tank holds up to 1,200 liters and the manufacture home park is beside the highway, and the park's water source is from a well, they believe the tank is a significant concern of potentially contaminating the soil, and waterway.

The landlord indicated that their insurance broker says that if a residential policy has environmental coverage for their own oil tank it should state that in the policy. The landlord stated there is no such wording the tenant's insurance policy. Filed in evidence is as letter from the landlord's insurance broker.

The landlord confirmed that they have not had the tenants insurance policy looked at by legal counsel that is an expert in insurance policies and they have not had a certified person inspect the tenant's oil tank.

The tenant testified that they have insurance on their manufacture home and their broker confirms that they are covered should something happen to the oil tank. The tenant stated that on page 4 of the policy it grants permission to keep and use fuel oil or similar materials for normal use. Filed in evidence is a copy of the tenant's insurance.

The tenant testified that they have looked into insurance called environment hazard, but since they are not the owner of land and simply rent it, they cannot find any such insurance called by that name and the landlord has provided them with no information on where to obtain such insurance. The tenant stated that they have been told on several occasions by their insurance broker that their policy covers any damage caused by their oil tank should something happen.

### Analysis

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

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- Put the landlord's property at significant risk.

In this case, the landlord has provided no evidence that the tenant's oil tank on this specific site is putting their property at significant risk. The landlord has not inspected the tenant's oil tank nor have they had a certified technician inspect the oil tank to determine if the tank was a significant risk or that the tenant has failed to maintain the tank. I find simply owning an oil heating system does not automatically put the property at significant risk as this method of heating has been used for many decades.

I find the landlord has failed to prove the tenant has put the landlord's property at significant risk. Therefore, I grant the tenant's application to cancel the Notice issued on September 19, 2015. The tenancy will continue until legally in accordance with the Act.

Since the tenant has been successful with their application, I find the tenant is entitled to recover the cost of filing fee from the landlord. Therefore, I authorize the tenant a onetime rent reduction in the amount of **\$50.00**, from a future rent payable to the landlord in full satisfaction of this award.

Furthermore, this matter is related to whether or not the tenant has adequate insurance to ensure the landlord's lawful interest in the property is protected should something unforeseeable happen to the tenant's oil tank.

While this is a legitimate concern of the landlord to want to ensure their interest is protected by the tenant having proper insurance should an oil leak occur and contaminate the property, I find the following.

I accept the landlord's insurance broker indicates that a residential policy should state directly on the policy that it is covered with "environmental coverage". There is no evidence that the landlord's insurance broker reviewed the tenant's insurance policy or that they contacted the underwriter of the insurance policy to determine if the tenant's insurance is not adequate, as the wording of policies can be different depending on the underwriter.

Further, I also accept that the tenant has been told by their insurance broker that they are covered should the oil tank leak; however, I find it would be reasonable for the tenant to write directly to their insurance broker or underwriter and have them directly answer that question in writing to satisfy the landlord's concerns.

Therefore, **I Order** that the tenant write to their insurance broker or underwriter asking them whether or not their insurance policy covers any cleanup that maybe necessary should their oil tank leak on to the landlord's property causing damage, and provide a copy of your letter to the landlord within two weeks of receiving my decision. Once you received a response from the insurance broker or underwriter, a copy is to be provided to the landlord.

Should the policy not cover the landlord's interest in the property, it is the tenant's responsibility to obtain the required insurance or alternately it may be necessary to switch to an alternate heat source.

Furthermore, I also find it reasonable since the landlord is in the business of renting, that they would provide their tenants with information, such as were to obtain the "environment coverage", if one should exist for manufacture homes that are renting the site.

### Conclusion

The tenant's application to cancel the Notice, issued on September 19, 2015, is granted. The tenancy will continue until legally ended in accordance with the Act. The tenant is authorized a onetime rent reduction in the amount of \$50.00, to recover the filing fee from the landlord.

The tenant must also comply with my above order.

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: November 27, 2015

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Residential Tenancy Branch

