



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 1027110 BC Ltd., and Vancouver Eviction Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MT, CNC, OPC, FF

### Introduction

This hearing was set to deal with an application by the landlord for an order of possession based upon a 1 Month Notice to End Tenancy for Cause and an application by the tenant for orders setting aside that notice and allowing him more time in which to make that application.

The hearing was adjourned twice for reasons set out in the previous Interim Decisions. The hearing did proceed on December 1, 2015 and the parties were able to complete their affirmed testimony on that date.

On November 30 the tenant submitted 46 photographs as evidence. He did not serve them on the landlord. At the time of the hearing the tenant's photographs had not yet made their way to my desk. I told the parties that I would not accept the tenant's photographs as evidence. My reasons were that they had not been served on the other side and, given the history of this particular application, the tenant had had ample opportunity to submit them in advance of the hearing.

When I received the photographs I did look at them. There were four packages of photographs. Two of them had already been filed by the tenant. One contained photographs of a dead raccoon and of another messy site in the park – neither of which is relevant to this proceeding. The final envelope was of the tenant's site, taken the tenant said after he had cleaned up the site. In making my decision I have not considered the last two packages of photographs filed by the tenant.

The landlord also filed photographs. The landlord's agent testified that he served these photographs on more than one occasion by posting them to the van where the tenant is living. I accept the agent's testimony and I accept the landlord's photographs as part of the evidence.

The hearing was lengthy and was made more difficult by the tenant's consistent inability to follow directions. He continually interrupted the proceedings. Each time I explained to him that I had to hear the landlord's evidence first and then he would have an opportunity to tell me his side of the story. Each time the tenant apologized for the interruption and then repeated the behavior a few minutes later.

Similarly, the tenant kept telling me about a fall he had experienced in April 2015; damage incurred to the manufactured home during a storm in August 2015; and an alleged agreement with the landlord that included purchase of the manufactured home. I kept explaining to him that the application before me did not relate to any of these issues and that his evidence on these points was irrelevant. He would say he understood but continued to repeat this testimony at every opportunity; whether he or someone else was testifying at the moment.

At one point in the hearing the landlord's agent's telephone connection was interrupted. I told the parties that I would not hear any evidence until the agent came back on the line. The tenant said he understood and continued to give me his evidence, even though he had not yet been sworn in as a witness. Although I kept asking him to wait until everyone was on the call he kept talking.

Throughout the hearing, but particularly at the end, the tenant kept trying to engage the landlord and/or the landlord's agent into a negotiation for the purchase of the manufactured home. Although I kept saying that this was not an issue before me and I wanted to hear the evidence related to this application the tenant persisted in his efforts.

Finally, although I ruled at the beginning of the hearing that I would not accept the late photographs in evidence, the tenant continued to refer to me to them.

#### Issue(s) to be Decided

- Should the tenant be granted additional time in which to file his application?
- Should the landlord be granted an order of possession?

#### Background and Evidence

This month-to-month tenancy commenced November 7, 2009. The monthly rent is currently \$560.00.

There have been two previous attempts by the landlord to end this tenancy. The first was an application for an early end to tenancy. The landlord's application was dismissed because the arbitrator found there was no urgency to the situation.

The second was based upon an earlier 1 Month Notice to End Tenancy for Cause. The issue at the hearing was the condition of the tenant's site. The tenant was successful on that hearing. Part of the arbitrator's decision is relevant to this proceeding:

"Furthermore, there was no evidence before me that would indicate the Tenant knew, or ought to have known that he would be evicted at this time, based upon the condition of his site or the presence of vehicles parked on his site . . . I am satisfied that there may be cause to end this tenancy pursuant to section 40 of the Act; in the future if the tenant fails to comply with the *Act* and Park Rules."

AS, a bylaw enforcement officer for the municipality, testified. He said that in December 2014 the city first received a complaint about unsightly property and someone sleeping in a van.

He went to the site on December 8, 2015; February 27, 2015; March 31, 2015; May 10, 2015; June 17, 2015; and August 12, 2015. On each occasion the condition of the site was the same and the tenant was clearly living in the van. On each occasion he told the tenant that sleeping in the van was contrary to the city bylaw and that he had to clean up the site. The tenant's response was to threaten to sue him.

On March 31, 2015 the city sent the landlord, who had only purchased the property a month earlier, a letter advising that the property was unsightly and that if the landlord did not remedy the situation the city would enter onto the property and do the required work at the property owner's cost. The city sent the landlord a second letter on the same date advising that: "A recent inspection of the above property has revealed that you are allowing a person(s) to reside/live in a camper van which is located in front of the Mobile home trailer #9. Your property is zoned CTA-Tourist Accommodation. This zoning does not permit this use on the property. You are required to stop the illegal use by April 14, 2015."

On August 12, 2015 the witness issued two tickets against the landlord. One was for "use contrary to zoning" and the other was for "permit unsightly property". The fines total \$750.00.

On October 14 the witness returned to the site, where conditions remained the same.

On October 24 the city again wrote the landlord. The letter advises that the city intends to enter the property and clean it up at an estimated cost of \$4845.83, which will be charged to the landlord.

The witness stated that they have received three complaints: one in December 2014 and two in early 2015. Their process is complaint driven and the fact that this file has been unresolved for a year is an issue for them.

One of the partners of the landlord company testified. The landlord acquired ownership of the property on February 27, 2015. There are 47 sites in this park. It is the landlord's hope to redevelop the property into a multi-use property that will include, among other things, an assisted living facility. They do not yet have the necessary approvals to proceed with the development. In the meantime, they have been trying to work with the existing residents of the park. To date, they have purchased twenty of the homes in the park. Some of these arrangements include a later possession date and a period of rent-free living.

The witness did meet with the tenant in the spring of 2015 and discussed various possibilities for settlement. He testified that the tenant represented himself as the owner of the manufactured home. After that conversation they searched the official records and discovered that the tenant was not the registered owner of the home. Since then they have refused to negotiate with the tenant about buying the manufactured home because he is not the owner. In his evidence, the tenant said he told the landlord that he did not own the home.

The witness also testified about some other events that led him to the conclusion that the tenant was not a truthful person; the tenant challenged those statements in his evidence.

The witness testified that he has been in the park on several occasions in the past month and he had not noted any changes at the tenant's site.

The landlord's agent testified that he became involved with the landlord and this park in July. He said he has known the tenant for many years.

On July 30 he posted a breach letter on the tenant's van. The breach letter advised that the city had advised the landlord that if the site was not cleaned up it would impose fines on the landlord. The letter stated: "You are hereby put on notice that you have 7 days to remedy this situation by cleaning up the derelict vehicles, junk and refuse on the property. Failing to do so will result the Landlord issuing an 1 month notice to cause to end your tenancy." On the day he posted the breach letter several of the neighbours came to him and expressed their frustration at the situation.

The agent testified that he spoke to the tenant the day after he delivered this letter. The tenant promised to clean up his site and told the agent he had people who could help him.

The agent testified that he talked to the tenant about getting ownership of the manufactured home transferred into the tenant's name so he would be in a position to negotiate with the landlord. On each occasion the tenant told him that the owner of the manufactured home would be contacting him.

On August 15 he personally served the 1 Month Notice to End Tenancy for Cause on the tenant. The reasons checked on the notice are:

- Tenant or a person permitted on the property has:
  - significantly interfered with or unreasonable disturbed another occupant or the landlord.
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
  - put the landlord's property at significant risk.
- Tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property.
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.
  - jeopardize a lawful right or interest of another occupant or the landlord.

The tenant testified that he is 77 years old and has a variety of health issues. He is a great admirer of Mother Teresa and his own charity is modelled after her work. He collects clothes to distribute to needy people in his neighbourhood and to send overseas.

The tenant acknowledged that he was served with the 1 Month Notice to End Tenancy on August 15, 2015. He did not file this application disputing that notice until August 26, 11 days later. The tenant said he was delayed because he was sick. At first he testified that he was in the hospital because he was in an accident. When I pointed out to him that according to the photographs he filed his accident was in April he said he could not remember the dates of his hospitalizations. He said he had pneumonia and a very serious flu – he thought that was in August. He thought he had a doctor's letter for that.

In his rebuttal evidence the landlord's agent testified that he spoke to the tenant on August 20 and August 25. He asked the tenant if he was going to file an application disputing the notice to end tenancy. The tenant said he was going to. The agent also testified that the tenant did not look sick to him on either occasion.

When asked the tenant's advocate testified that the tenant first contacted her on September 15, 2015.

The tenant testified that he does not own the manufactured home that sits on this site; his very close friend does. They have an agreement. Sometimes he gives his friend some money for the use of the home, The tenant testified that he has a letter of authorization from his friend and title could be changed into his name at any time. However, as of the date of the hearing his friend is still the registered owner of the manufactured home

The tenant testified that the manufactured home is only used for storage. He has not slept in it, or used the kitchen and bathroom facilities in it, for almost a year. A few weeks ago the Assistant Fire Chief visited his unit. The electricity to the manufactured home has been shut off so there is no fire hazard. The Assistant Fire Chief has visited him on three different occasions about the condition of his site and home.

Since February 2015 he has been sleeping in the camper van parked on the site. Although it is equipped with kitchen and bathroom facilities he has not used either. He uses the bathroom at the nearby Tim Horton's and he showers at his friends' homes. The tenant acknowledged that there is a lot of stuff in the van.

About a month ago the RCMP spoke to him about sleeping in the van. They were of the opinion that he was at risk sleeping there. For the past month he has been sleeping at friends' homes.

The tenant has built a structure at the back of the site. It is about ten feet square and about fifteen feet high. From the photographs it appears to be fairly roughly constructed out of unpainted plywood. The tenant says he has a permit for this structure and he referred to it as the gazebo.

The tenant testified that in this manufactured home park and in many others in the province, residents use motor homes as extra accommodation so he could not understand why he could sleep in his van. The tenant acknowledged that he had received multiple visits from the bylaw officer, which he described as harassment. He said he had been in contact with a human rights organization who would be contacting the bylaw officer on his behalf.

The tenant testified that he never received a letter from anyone advising him that he had to clean up his site. He did acknowledge that the condition of his site was the issue in the two previous hearings.

The tenant testified that on November 30, the day before this hearing, he had cleaned up everything in the yard. He put everything from the yard into the gazebo, where it is all organized and put under tarps. He did this work with the help of his friend, DS. They had everything cleaned up in 1 1/4 hours. The tenant asserted that the yard is as clean as can be and certainly ten times cleaner than his neighbour's.

The tenant has not paid any rent since July. He says he had an agreement with the landlord that included a year of free rent. The landlord has served the tenant with a 10 Day Notice to End Tenancy for Non-Payment of Rent and the hearing on that issue is set for December 30, 2015.

The tenant's friend and former neighbour testified. She said that about 1 1/2 weeks ago the tenant had asked her to help him clean up his yard. They were both sick so were not able to get to the task right away but just the day before they were able to spend four hours at the site and cleaned everything up. She testified that she bagged and boxed lots of things and took them to a charity. She has helped the tenant clean up in the past. Last summer she organized the interiors of the two cars that the tenant uses for storage and he has promised her she can start on the interior of the manufactured home. She testified that except for some garbage that has to be taken away everything looks great.

Her testimony was remarkably similar to the evidence she gave at the hearing on February 19, 2015, which was summed up by the arbitrator as:

"Witness DB testified that she was asked by the tenant to clean his rental site and that the tenant showed her a letter regarding this cleaning. Witness DB stated that she was only given four days' notice about this cleaning but that she had thoroughly cleaned the rental site one week before this hearing. Witness BD stated that she cleaned the tenant's yard, mowed the lawn, cleared the whole left side of the trailer, and loaded a number of items. Witness DB indicated that she still had to complete some cleaning including garbage in the tenant's van."

The witness testified that the tenant uses their bathroom for his personal care and she does his laundry. She makes sure he is clean and that he eats every day. For the past month the tenant has been staying with her and her husband, as well as at other friends' home.

She also testified that the problem is two other residents of the park go to the tenant's site and mess up his stuff and steal things.

### Analysis

Section 59(1) of the *Manufactured Home Park Tenancy Act* allows an arbitrator to extend a time limit only in exceptional circumstances. What may be and may not be considered exceptional circumstances are explained in *Residential Tenancy Policy*

*Guideline 36: Extending a Time Period.* The *Guideline* sets out some examples of what are not considered exceptional circumstances including:

- The party who applied late for arbitration was not feeling well.
- The party did not know the applicable law or procedure.
- The party was not paying attention to the correct procedure.
- The party relied on incorrect information from a friend or relative.

An example of what might be considered an “exceptional circumstance” is that the party was in the hospital at all material times. The *Guideline* states that evidence which could be presented to show the party could not meet the time limit due to being in the hospital could be a letter, on hospital letterhead, stating the dates during which the party was hospitalized and indicating that the party’s condition prevented their contacting another person to act on their behalf.

The tenant is experienced in Residential Tenancy Branch hearings. On this application alone he twice applied for an adjournment for medical reasons. Each request was accompanied by documentation confirming his medical appointments. Yet, on the application for an extension of time in which to file his application for dispute resolution there is no documentation; his memory is uncertain; and his evidence vague.

The tenant’s application for an extension of time in which to file an application disputing the 1 Month Notice to End Tenancy for Cause dated August 15, 2015 is dismissed. Pursuant to section 40(5) he is conclusively presumed to have accepted that the tenancy ended on the effective date of the notice, September 30, 2015.

The landlord’s application for an order of possession is granted. The order will be effective two days after it is served on the tenant.

Even if I had granted the tenant’s application for an extension of time I would have found that the landlord has cause for ending this tenancy.

Section 26(3) provides that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the manufactured home site and in common areas.

The tenant had notice that if the site was not cleaned up he could be served with a notice to end tenancy. The decision of the last arbitrator, which was filed by the tenant as part of his evidence package, made that clear.

The property is unsightly and has remained for over a year. According to the tenant and his friend it took less than four hours to clean up the site. If that was all the effort that



was required why wait a year – through multiple visits by the city and other officials, warning letters, tickets to the owners, and two hearing dates – before doing this little bit of work?

In fact, the clean-up is not really a clean-up. At best, it just consisted of moving the items that were stacked beside the manufactured home and moving it into the storage structure at the back of this site.

The current situation is that the tenant does not own the trailer parked on this site; he has done nothing to have ownership transferred into his name, if that is really a possibility; he has not used the trailer for anything other than storage for almost a year; he has not used the cooking or bathroom facilities in either the trailer or the van for about a year; and now he is not even sleeping in the van. The site is currently only a storage facility for the tenant's collections. It does not matter whether the collections are for the tenant's personal use or for a charitable purpose; he is still required to maintain his site in accordance with section 26(3).

As the landlord was successful on its application it is entitled to reimbursement from the tenant of the \$50.00 fee it paid to file it. A monetary order in this amount is granted to the landlord.

#### Conclusion

- a. An order of possession effective two days after service is granted to the landlord. If necessary, this order may be filed in the Supreme Court and enforced as an order of that court.
- b. A monetary order in the amount of \$50.00 has been granted in favour of the landlord. If necessary, this order may be filed in the Provincial Court and enforced as an order of that court.

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: December 10, 2015

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Residential Tenancy Branch

