



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Murphy Holdings Ltd. / Fernridge Mobile Home Park  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC, OLC, FF

### Introduction

This hearing concerns 2 separate applications by the tenant. In each of the applications the tenant seeks cancellation of a notice to end tenancy / an order instructing the landlord to comply with the Act, Regulation or tenancy agreement / and recovery of the filing fee. While the subject unit remains the same in both applications, there are 2 separate notices to end tenancy at issue. Both parties attended and / or were represented and gave affirmed testimony.

By way of written submission and by way of oral request during the hearing, landlord's counsel (the "landlord") requested an order of possession in the event the tenant's application for cancellation of the notice(s) does not succeed.

### Issue(s) to be Decided

Whether either party is entitled to any of the above under the Act, Regulation or tenancy agreement.

### Background and Evidence

Pursuant to a written tenancy agreement the month-to-month tenancy for a manufactured home park site began on October 01, 2012. Rent is due and payable in advance on the first day of each month. The current monthly rent is \$571.00.

#### *First notice to end tenancy*

The landlord claims that the tenant has not lived in the manufactured home "for at least a year," and that during that time, "RD," a third party has taken up occupancy of [the] manufactured home site rented by the Tenant." In the result, by "warning letter" dated March 11, 2015, the landlord instructed as follows:

There is no subletting or anyone other than [the tenant] to stay or live at [unit address].

Thereafter, by way of a manually printed notice on the landlord's stationary dated January 14, 2016, and titled, "Breach of Park Rule," the landlord instructed as follows:

The tenant has sublet the premises [site number] without the prior permission in contravention of section 28 of the Manufactured Home Park Tenancy Act. You have till Jan 31/2016 to leave.

The tenant's agent (the "tenant") filed an application to dispute the notice on January 20, 2016, and in the application describes a number of irregularities with the notice which she considers made the notice invalid.

*Second notice to end tenancy*

Pursuant to section 40 of the Act which addresses **Landlord's notice: cause**, the landlord issued a 1 month notice to end tenancy dated January 21, 2016. A copy of the notice was submitted in evidence. The date shown on the notice by when the tenant must vacate the manufactured home site is February 29, 2016, and reasons identified on the notice in support of its issuance are as follows:

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Tenant has assigned or sublet the rental site without landlord's written consent

The tenant filed an application to dispute this particular notice on January 24, 2016.

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Further to the above, the parties addressed a dispute surrounding rent paid by the tenant thus far in 2016. During the hearing the parties undertook to resolve all aspects of the dispute(s) between them.

Analysis

Below, the 2 notices to end tenancy will be addressed separately.

First notice dated January 14, 2016 ("Breach of Park Rule")

Section 45 of the Act addresses **Form and content of notice to end tenancy**:

45 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the manufactured home site;
- (c) state the effective date of the notice,
- (d) except for a notice under section 38(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find that the subject notice does not fully comply with the above statutory provisions, and in the landlord's written submission the landlord acknowledges this as follows:

The Landlord concedes that the form of notice to end tenancy dated January 14, 2016 was not prepared on the prescribed form required by the Director, that is substantially deviates from the prescribed form, and that it should be set aside for non-compliance with section 10 and 45(e) of the Act.

For the above reasons, the notice to end tenancy dated January 14, 2016 is hereby set aside. Despite failure of this notice to comply with the Act, its issuance gave rise to payment of a **\$100.00** filing fee by the tenant in order to dispute it.

*Second notice dated January 21, 2016, and issued pursuant to section 40 of the Act*

I find that the 1 month notice to end tenancy for cause is in the approved form and contains the information required by the Act. It is noted that the tenant paid a **\$100.00** filing fee in order to dispute it.

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Section 56 of the Act addresses **Opportunity to settle dispute:**

56(1) The director may assist the parties, or offer the parties an opportunity, to settle their dispute.

(2) If the parties settle their dispute during dispute resolution proceedings, the director may record the settlement in the form of a decision or an order.

Pursuant to the above statutory provision, and as a result of discussion between the parties during the hearing, a resolution of the dispute was achieved, and it was specifically agreed as follows:

### **RECORD OF SETTLEMENT**

- that an **order of possession** will be issued in favour of the landlord to be effective **July 31, 2016**;
- that the tenant will attempt to sell the subject manufactured home prior to July 31, 2016, and that success in doing so will preclude the landlord from commencing action to enforce the order of possession;
- that the landlord will destroy rent cheques issued by the tenant and currently held by the landlord with respect to each of the months of January, February, March and April 2016, as the amount made payable on each of these cheques is incorrectly shown as \$584.00;
- that following from the above, the tenant will issue 2 new cheques, as follows:
  - i) a cheque made payable to the landlord in the amount of **\$1,713.00**, which reflects the total amount of correct rent due for January, February and March 2016 (3 x \$571.00);
  - ii) a cheque made payable to the landlord in the amount of **\$421.00**, which reflects rent due for April 2016 in the amount of \$571.00, MINUS \$150.00; the deduction of \$150.00 reflects the landlord's reimbursement of the \$100.00 filing fee paid by the tenant with respect to issuance of the first notice to end tenancy, in addition to 50% of the \$100.00 filing fee paid by the tenant with respect to issuance of the second notice to end tenancy.
- that the above 2 cheques will be delivered to the landlord as soon as possible but in any event by not later than **midnight, Friday, March 11, 2016**.

As the parties successfully resolved the dispute, I consider the tenant's application for issuance of an order in which the landlord is instructed to comply with the Act, Regulation or tenancy agreement to be withdrawn.

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Conclusion

The parties resolved the dispute pursuant to the **Record of Settlement**, as above.

Following from the settlement achieved by the parties, I hereby issue an **order of possession** in favour of the landlord effective **July 31, 2016**. This order must be served on the tenant. Should the tenant fail to comply with the order, the order may be filed in the Supreme Court of British Columbia and enforced as an order of that Court.

The application for an order instructing the landlord to comply with the Act, Regulation or tenancy agreement is withdrawn.

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: March 08, 2016

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Residential Tenancy Branch

