



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VRAN ENTERPRISES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      AS, CNC, FF, MNSD

### Introduction

This hearing dealt with an application by the tenant seeking to have a One Month Notice to End Tenancy for Cause set aside, an order allowing the tenant to assign or sublet because the landlords permission has been unreasonably withheld, an order for the return of the security deposit and an order to recover the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

### Preliminary Issue

Part of the tenants' application is a request to have the security deposit returned, however , both parties agree that the issue of the deposit will be dealt with at the end of the tenancy, whenever that may be. Based on that agreement, this decision will not make any findings in regards to the security deposit.

### Issues to be Decided

Is the tenant entitled to any of the above under the Act, regulation or tenancy agreement?

### Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about January 1, 1998 to the subject tenants' mother. Rent in the amount of \$803.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$250.00. On February 24, 2016 the landlord issued a One Month Notice to End Tenancy for Cause on the grounds that the tenant has assigned or sublet the rental unit\site without the landlords' written consent and that the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

MM's mother passed away in September 2013. The landlord stated that he was going through a similar situation and had compassion for the family and gave them their space. The landlord stated that SM is the executor and is the only person that tenancy can be rightfully assigned to without permission; all others require the landlords' permission. The landlord stated that MM has resided in the home without his written consent. However, the landlord stated that he requested that MM come into his office and fill out the appropriate forms to make application to become a tenant.

The landlord stated that MM would become aggressive, threatening or dismissive towards him anytime he brought up filling out the application for becoming a tenant. The landlord stated that he at no time denied the tenant the opportunity to live in the park, but didn't feel the tenant should be able to bypass the rules that apply to everyone.

The landlord stated that the MM also didn't follow the parking regulations in the park by parking commercial vehicles in roadways. The landlord stated that the electrical in MM's home was not up to standard and that was a safety violation that could threaten other tenants or the park itself. The landlord stated that he requests an order of possession.

The tenant gave the following testimony. The tenant stated that he is doing everything he can to sell the home and move. The tenant stated that he doesn't want to be in this "toxic environment" any more than he has to. The tenant stated that the landlord has known full well that he has been residing in the home since his mother passed away as he has been paying the rent directly to him. The tenant stated that the landlord has

given him permission to stay by taking his money. The tenant stated that the other issues brought up by the landlord were insignificant in nature and has been corrected. The tenant stated that if the landlord wanted him to move out why didn't issue the notice sooner or stop taking his money for the rent.

### Analysis

When a landlord issues a notice under section 40 of the Manufactured Home Park Tenancy Act they bear the burden of providing sufficient evidence to support the issuance of the notice. The landlord issued the notice on two grounds. The first ground was based on the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The landlord submitted that the tenant did not keep a clean yard, had electrical deficiencies in the home and was parking commercial vehicles on the property. The tenant stated that he has corrected the electrical problem, his yard is clean and that he no longer parks his commercial vehicle on the property. The landlord stated that it was a nuisance but did concede that it had gotten better. Based on the above I find that the tenant has corrected the issues brought forward by the landlord and that a material breach of the tenancy has not occurred.

The landlord also issued the notice to end tenancy on the grounds that the tenant has assigned or sublet the rental unit\site without the landlords' written consent.

MM's mother passed away in September 2013 and the landlord was aware of this. MM has paid the rent from that point forward until present. I find that the landlords' acceptance or rental payments since 2013 and lack of action to address the tenancy equates to the landlord giving his permission to MM to become a tenant and that MM is the lawfully residing as such.

The Manufactured Home Park Tenancy Act defines a tenant as follows:

**"tenant"** includes

- (a) the estate of a deceased tenant, and
- (b) when the context requires, a former or prospective tenant.

As I have found MM to be the tenant he no longer requires an order under Section 28 of the MHPTA to assign the tenancy. Based on all of the above, I find that the landlord has not met the burden of providing sufficient evidence to support the notice to end tenancy under Section 40 of the Act and I therefore set aside the One Month Notice to End Tenancy for Cause dated February 24, 2016, it is of no effect or force.

As the tenant has been successful in this application, they are entitled to the recovery of the \$100.00 filing fee. The tenant is entitled to a one time rent reduction of \$100.00 from the next rent payable.

### Conclusion

The notice to end tenancy is set aside. The tenancy continues.

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: April 27, 2016

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Residential Tenancy Branch