



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNC, FF

### Introduction

This hearing dealt with an application by the tenants for an order setting aside a 1 Month Notice to End Tenancy for Cause and granting them more time in which to file this application. All parties appeared and gave affirmed evidence.

Although the tenants had served their Application for Dispute Resolution and supporting evidence on the landlord they did not serve an additional package of five pages. Because the documents had not been served on the other side, they could not be admitted into evidence.

The hearing started November 22. Not all of the witnesses could be heard in the time allotted for the hearing so it was continued on December 6 at 9:00, a date and time convenient for all participants.

### Issue(s) to be Decided

- Should the tenants be granted additional time in which to file the Application for Dispute Resolution?
- If so, does the landlord have cause, within the meaning of the *Manufactured Home Park Tenancy Act*, for ending the tenancy?

### Preliminary Issue

The notice to end tenancy was posted on the door of the rental unit on September 13, 2016. Although the effective date of the notice was stated to be October 13 that is incorrect. Pursuant to section 40(2) the effective date of the notice is October 30. This error does not affect the validity of the notice as it is automatically corrected by section 46.

The notice was posted on the door of the rental unit on September 13. Subsection 40(4) says that a tenant may dispute a notice to end tenancy by filing an application for dispute resolution within ten day of receiving the notice. Pursuant to section 83 a document posted on the door of a rental unit is deemed delivered on the third day after it is post. If the notice is deemed delivered on September 16 the tenants had until September 26 to file their application for dispute resolution. However, they did not do so until September 28.

Section 59(1) allows an arbitrator to extend a time limit established by the Act only in exceptional circumstances. Residential Tenancy Policy Guideline 36: Extending a Time Period gives some guidance as to what may be considered "exception circumstances".

The rental unit is located in a small community in the northern part of Vancouver Island.

The female tenant is 70 years old. She has lived in this home for 39 years. In the summer of 2016 she had a stroke. On September 14, on the way to a doctor's appointment in Nanaimo, she suffered a very serious heart attack. She was taken to hospital in Victoria where she remained until September 26. On September 26 she was transferred to the hospital in Nanaimo. On September 28 she was discharged from hospital. She stayed with her daughter in Nanaimo for a few days until she was well enough to return home.

The male tenant is 75 years old. He is a retired saw mill worker. He also has significant health difficulties. In September 2015 he had heart surgery. There were post-operative difficulties. Although he needs additional surgery it cannot be performed because he is not healthy enough for it. He also suffers from diabetes.

While the female tenant was in the hospital and at her daughter's home, the male tenant remained at home. He said that he was so worried about the female tenant that he could not focus on anything else. On September 28 he made the 1 ½ hour trip to the nearest Service BC Office to file the Application for Dispute Resolution.

During his testimony, the male tenant's daughters interjected. They stated that their father only has a grade 2 education and has learning disabilities. They also said that their father usually calls them for assistance when he receives important documents. The male tenant dismissed these statements. I will observe that his written submissions were more literate than many of the documents I have read over the years as an arbitrator.

I am going to grant the tenants' application for an extension of time. In coming to this conclusion I have considered the following factors:

- The female tenant was in the hospital during the relevant time period.
- The age and health of the tenants.
- The distance to the nearest Service BC Office.
- The fact that the application was filed on the same day the female tenant was discharged from hospital and it was clear that she was going to be all right.
- The application indicated there may be some merit to their claim.

If the parties had been younger and healthier and the Service BC Office closer I might not have considered the delay to be the result of "exceptional circumstances".

However, I find that the particular combination of events in this situation do amount to "exceptional circumstances."

### Background and Evidence

The rental unit is site in a manufactured home park. The female tenant has lived in that home for 39 years. On the original tenancy agreement she and her husband were listed as the tenants. She has been a widow for several years.

The male tenant has lived in the park for six years. At first he lived in a manufactured home that he bought from the current park manager's mother. Four years ago he moved in with the female tenant. He as since sold his trailer.

The landlord is the current park manager. She has held this position for about two years. Her mother had been the park manager for ten years previous. For reasons that were not disclosed and which are not relevant to this hearing, the mother had been fired by the park owner and the daughter had been hired. One of the male tenant's daughters lived in this park for twelve years. She moved away about two years ago. While she was a tenant of this park she used to work in the park office with the landlord's mother.

The landlord testified that she has a mandate from the owner to bring the park to a higher standard. In addition to getting the park cleaned up she has also been trying to get the park paperwork in order. She stressed that before she takes any action she gets direction and advise from the park owner and from ROMS.

Between January and September there were a series of disputes between the park manager, the male tenant and his family.

In January 2016 they had an argument about whether the tenant was permitted to park vehicles on the land across the road from the rental unit. The landlord had first asked the tenant to move his vehicles at the beginning of September but had not done much about it because the tenants were sick. During the argument the male tenant yelled at the landlord and said a lot of things. She was very upset. That night one of the male tenant's daughters called the landlord. She was upset and forceful with the landlord.

On January 30 the landlord and the tenants met. The landlord explained that the male tenant should not talk to her like that. The tenants signed a new tenancy agreement that had both of them listed as the tenants and occupants of the unit. The landlord also offered assistance to the tenants with cleaning up their site. The offer was confirmed in a letter of the same date. It said that the tenants had until March 1 to get their site cleaned and organized. It went on to say that: "You mentioned that your family was going to come and help. If after two weeks they cannot make it your to notify the office so that we can set a day to assist you, at no charge." The meeting ended on a cordial note.

That night the landlord received a call from the male tenant's daughter who was very upset that the landlord had coerced the tenants into signing away their rights. In the course of the conversation the daughter threatened to call a variety of people, including the local media. The landlord hung up.

In her testimony the daughter expressed the view that the female tenant should not have been required to sign a new tenancy agreement. She was also certain that her father had been conned into signing some sort of letter that gave away rights.

Eventually the site was cleaned to the satisfactory standard.

The male tenant's brother and nephew applied for tenancy in the park. Their application was rejected by the park owner. The family members were unhappy with this decision. The landlord said that a telephone call was made to the park owner in which both he and she were threatened. The owner told the park manager that he did not want these people in the park again.

There was a confrontation between the landlord, the male tenant and his family on April 30. The landlord followed up with a letter to the male tenant that is aggressive behaviour would not be tolerated. The landlord says that in a subsequent conversation the male tenant told her she better watch herself; someone might go after her children next or call Social Service and she would lose her kids again. The male tenant testified that he never threatened the landlord's children or to call Social Services.

On July 21 the landlord was driving by the tenants' site when she notices a clothes line. The Park had adopted Rules and clotheslines were prohibited. She stopped and told the male tenant that he had to remove it. The landlord said the male tenant "lost it" on her; he testified that she was aggressive with him and gave him an unreasonable short deadline. He told her "I'm getting a lawyer and you're going to have problems." The next day he went to the village office to see if there was a municipal bylaw against clotheslines. The male tenant basically testified that there are no park rules and if there are any, they don't have a copy. The next day the landlord gave the male tenant a warning letter about his conduct towards her.

The evidence is that the clothesline had probably been there for many years.

On September 6 the landlord was driving past the tenants' site and saw the male tenant's brother. She testified that the two brothers immediately began yelling at her. The male tenant thrust a copy of the Landlord Tenant Guide at her and pointed at the section that says a landlord cannot deny access to guests. He continued to yell at her. She testified that she was very upset and shaking. She had had enough of being yelled at. She grabbed the booklet and went home. About fifteen minutes later she came back and apologized for her behaviour.

The male tenant said the landlord stopped her motor vehicle and started screaming at his brother. He produced the booklet which they had obtained from the local MLA's office. After the landlord left his brother and the female tenant went to the RCMP.

The next day the police visited the landlord. The parties gave opposing version of what they were told by the police. The landlord said the police said that individuals could be barred from private property; the tenants said the police told them it was a public road and not one could be barred. There was no evidence from the police.

On the owner's instructions the landlord gave the tenants another warning letter. The letter covered several topics but focused on the fact that the tenant should not yell at her or threaten her.

The final incident was on September 12.

Two new tenants, RS and CS, had moved into the park in mid-April. They said they moved to this area for health reasons. They thought a quieter setting would be good for them. RS says he has had several strokes and heart attacks. He walks around the

park a dozen or more times a day for exercise. CS said she is fighting an unspecified terminal illness.

RS testified that on September 12 he was waling past the tenants' site as they were coming out of their home. Their three dogs rushed him. He pushed one dog away and the male tenant yelled at him for kicking his dog. He responded that the male tenant should read his tenancy agreement and started walking away. The male tenant, who was very aggressive and argumentative, kept following him and yelling at him.

The male tenant testified that he saw RS's foot hit the dog. He yelled "don't kick the dog". RS responded that his dogs should be on a leash and you fat [deleted] should be kicked out of the park. The male tenant responded that "I'm not the one that's looking in people's windows you Peeping Tom."

The female tenant testified that she saw RS kick the dog. She told the male tenant to let it go. She also testified that previously she had caught RS looking in the window of their home.

RS left and the tenants got into their vehicle and headed out on their original errand.

On the way they saw EA, another park resident, walking to they picked him up and gave him a ride to the store. All three testified that EA went into the store while the male tenant stayed in the motor vehicle. EA testified that before they picked him up he heard a dog yelp and a loud male voice that was not the male tenant.

On the way back from the store the male tenant stopped at the side of the road to talk to a neighbour. EA said there was enough room for another vehicle to get by.

EA and both tenants testified that while they were parked another vehicle sped by them at a high rate of speed. The tenants took EA home. EA said that shortly after he heard his neighbour Charlie, Charlie's wife and other person yelling at each other.

CS's evidence that she was driving home when she saw the male tenant stopped in the road talking to someone. Although he saw her he made no effort to make room for her to pass. She was just deciding to back up and take an alternate route home when the other person went into his home so she started ahead. The male tenant applied the brakes causing her to stop. Then he started to move again so she did the same. The male tenant applied the brakes again. This procedure continued until she was near her daughter's place. CS could feel a panic attack coming on so she was desperate to get

to her daughter's. Finally she sped past the male tenant and into the vacant lot beside her daughter's.

At that point Charlie and his wife, who live beside her daughter, rushed at her yelling and swearing. They were upset because their children were outside and she had almost hit them with her vehicle. She tried to explain what had happened but they were not interested. Finally, she went inside her daughter's home and eventually home.

Her husband RS went to the police about the incident. The police spoke to the male tenant. Both men apologized to the other and both testified that they accepted the apology.

CS filed a letter of complaint with the landlord.

One of the aspects of the dispute between CS, RS and the tenants was the allegation that RS was a Peeping Tom. RS and CS expressed outrage at the allegation. They testified that the male tenant has been spreading this story in the park. They also testified – CS in very emotional terms – about the effect the allegations were having on them.

The female tenant was adamant that she had seen RS looking in her window. The male tenant said that several other residents had told him about odd behaviour by RS including looking over fences and standing on someone's porch.

After receiving CS's complaint the landlord talked to the male tenant to get his side of the story. She spoke to the people that the male tenant said had told him about RS's behaviour. Apparently they did not say exactly what the male tenant said they said. One said he could not confirm that it was RS on his property; the other said that the male tenant had told him about it.

On the owner's instructions the landlord issued and served the tenants with a 1 Month Notice to End Tenancy for Cause. The sole reason on the notice was that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonable disturbed another occupant or the landlord.

Both the male and female tenants testified that for the past year the male tenant has been on some medication that made him quick-tempered and more aggressive. They testified that he is no longer on this medication.

The landlord was very clear that they have no issues with the female tenant and would like to continue a tenancy with her alone.

### Analysis

At the outset I wish to address the daughters' concerns that the tenants had signed away some rights. Neither party filed any document from the beginning of the year that reduced their rights. Further, it is only because the male tenant has signed a tenancy agreement and is listed as a tenant that he has any rights under the legislation. If he were not on the tenancy agreement legally he would just be an occupant, without any of the rights accorded to tenants.

The core of the landlord's case is summarized by her statement that "she was tired of being yelled at".

Whether the issue was moving some vehicles, cleaning up the site, or removing a clothesline or something else is irrelevant. None of those complaints are enough to end a tenancy and none of them are the reason for the notice being issued. The sole issue is whether the male tenant's behaviour towards the landlord is bad enough to end the tenancy.

Certainly, the male tenant and his family have a combative approach to dispute resolution. Further, they have not always sought assistance from the correct source. For example, if they felt that the landlord did not have the right to ban some of their relatives from the park the most effective response would have been to apply to the Residential Tenancy Branch for dispute resolution, not to go to the police, the MLA or any other organization that does not have jurisdiction. In a similar vein, the final authority on the clothesline question is the tenancy agreement and the park rules, and the validity or invalidity of those; not the local bylaw.

There are better and more effective means of responding to a landlord about any actions that he has directed than yelling at his employee. No one's job description includes taking abuse from client's or customers.

On the other hand, I am prepared to give the male tenant the benefit of the doubt and accept that his age, medical condition, and medication could contribute to his short-tempered and aggressive response to situations. Perhaps now that his is no longer taking that medication his response will be more moderate.



I order that the 1 Month Notice to End Tenancy for Cause dated September 13, 2016 be set aside. The tenancy continues until ended in accordance with the legislation.

I must warn the tenants that not all arbitrators would have come to the same conclusion when confronted with this fact situation and the evidence that is before me. Further, it is highly unlikely that an arbitrator in a future dispute resolution hearing will condone a continuation of this behaviour.

In reaching my decision I have given little weight to the complaints of RS and CS. As far as the incident with the dogs is concerned, both men testified that they accepted the other's apology and that appears to have been the end of the matter.

I have two problems with CS's version of events. First of all, it was contradicted by several witnesses and not backed up by anyone else. Secondly, it is just as consistent with an elaborate justification for reckless driving as it is with an accurate account of events. I am not concluding the CS was untruthful but I am concluding that there was nothing that would lead me to accept her version of events over that of the other witnesses.

As far as the allegations that RS is a Peeping Tom it is impossible for me to determine on the evidence before me whether the allegation is true or not; or whether the tenants are responsible for any gossip that is circulating in this community.

As the tenants have been successful on their application they are entitled to reimbursement from the landlord of the \$100.00 fee they paid to file it. Pursuant to section 65(1), that amount may be deducted from the next rent payment due to the landlord.

### Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated September 13, 2016 be set aside. The tenancy continues until ended in accordance with the legislation

*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 16, 2016

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Residential Tenancy Branch