



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RPP, OPT, AAT, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a notice to end the tenancy for cause and to obtain an Order of Possession of the rental unit; for an order that the landlord return the tenant's personal property; for an order allowing access to (or from) the unit or site for the tenant or the tenant's guests; and to recover the filing fee from the landlord for the cost of the application.

The tenant and the landlord attended the hearing and each gave affirmed testimony. The landlord also called one witness, the on-site manager, who also gave affirmed testimony. The parties were given the opportunity to question each other and the witness with respect to the testimony and evidence provided, all of which has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the parties were advised that the notice to end the tenancy is the primary subject of the application, and that the tenant's application for an order that the landlord return the tenant's personal is not sufficiently related and was not dealt with in this hearing.

### Issue(s) to be Decided

The issues to be decided are:

- Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Manufactured Home Park Tenancy Act*?
- Should the tenant be granted an Order of Possession of the manufactured home park site?
- Should the landlord be ordered to allow access to (or from) the manufactured home site for the tenant or the tenant's guests?

### Background and Evidence

**The landlord's witness** testified first, who is the on-site manager of the manufactured home park. He testified that this month-to-month tenancy, being the rental of a site within the manufactured home park began on February 1, 2011 and the tenant's manufactured home still remains on the site. Rent in the amount of \$375.00 per month is payable on the 1<sup>st</sup> day of each month and there are currently no rental arrears. A copy of the tenancy agreement has not been provided by either party.

The landlord's witness also testified that on November 23, 2016 he served the tenant with a 1 Month Notice to End Tenancy for Cause by posting it to the door of the manufactured home of the tenant and also sent a copy to the tenant by registered mail. A copy has been provided for this hearing and it is dated November 23, 2016 and contains an effective date of vacancy of December 31, 2016. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety of another occupant or the landlord;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The witness testified that the main reason for issuing it was due to repeated violence by the tenant, who would go on tyrants. A number of other tenants in the park have complained of the tenant going to others' homes threatening to beat them up, threatened to kill another, threatened to kill a girlfriend of a tenant, and about verbal abuse by the tenant. The tenant was arrested on November 2, 2016 for threatening to kill other tenants. The witness received a voice mail from the tenant saying that police had broken the tenant's jaw and ribs and worked him over, and the tenant threatened to do the same to the witness and the witness' son.

The witness posted a Breach Letter to the tenant's door on November 3, 2016, a copy of which has also been provided. It states that the landlord has received several complaints of abusive profane language and threats as well as a threat on the answering machine, and that if the behavior continues, the landlord will issue a 30 day notice to remove the manufactured home. Then the witness received another call from a neighbouring tenant saying that the tenant was at the neighbour's home, and the police again arrested the tenant.

**The landlord** testified that the current landlord company took over the manufactured home park in May, 2016, and everything was quiet until the fall. The landlord didn't deal directly with the incidents described by the landlord's witness, however the tenant had called the landlord complaining about some things unrelated. He seemed fine at that time.

On November 22, 2016 the tenant told the landlord that his rent was paid till December and that he wasn't allowed to be on the property due to a police incident, and that he would have his manufactured home out of the manufactured home park by December 31.

**The tenant** testified that the testimony of the landlord's witness doesn't make sense and that if it did happen like that the tenant would be in jail since. The testimony of the landlord's witness is hearsay evidence only. The tenant knocked on someone's door because someone had kicked in the screens on the tenant's manufactured home on November 2, 2016 and he simply asked the neighbours if they had seen any prowlers.

The tenant further testified that he was arrested for verbally threatening someone who trespassed on the tenant's property, and there are no charges and there is no court date, but the tenant was released on an Undertaking given to the police to not attend within 100 meters of the manufactured home park. The tenant gets along well with neighbours, and the condition of the Undertaking is not relevant to this hearing.

The tenant also testified that he received the landlord's Breach Letter, which made no sense to the tenant. Whenever the tenant has had any complaints, the landlord has not done anything.

The tenant submits that he may have left the voice message on the landlord's phone, and may not be allowed within 100 meters of the manufactured home park, but the landlord's testimony is hearsay only, and if there were threats to others, there would be back-up evidence. The landlord is trying to get the tenant locked up long enough to not pay rent so the landlord can sell the tenant's trailer as was done several times to others.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Manufactured Home Park Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the evidentiary material, including the Breach Letter. I have also considered the testimony of the parties, and I do not accept the testimony of the tenant that there is no Court date or any charges. The parties agree that the tenant was arrested and has been released

on a condition to not attend within 100 meters of the manufactured home park. That reason alone leads me to believe that the landlord does not have an ulterior motive for evicting the tenant. The tenant admitted that he was arrested for verbally assaulting someone but it is not relevant to this hearing. If the tenant is not permitted by way of a police Undertaking to attend within 100 meters of the manufactured home park, then the condition was issued due to incident(s) within the manufactured home park and is relevant to this hearing. The landlord's witness has received complaints from other tenants and a threatening voice mail from the tenant and I find that the landlord had cause to issue the 1 Month Notice to End Tenancy for Cause. Therefore, I dismiss the tenant's application to cancel it and the tenant's application for an Order of Possession of the manufactured home site.

The *Manufactured Home Park Tenancy Act* also states that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an Order of Possession in favour of the landlord, so long as the notice given is in the approved form. I have reviewed the 1 Month Notice to End Tenancy for Cause, and I find that it is in the approved form and contains information required by the *Act*. Therefore, I grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

Since the tenancy is ending, I also dismiss the tenant's application for an order that the landlord provide access to (or from) the manufactured home site for the tenant or the tenant's guests.

The tenant's application for an order that the landlord return the tenant's personal property is hereby dismissed with leave to reapply.

Since the tenant has not been successful with the application, the tenant is not entitled to recovery of the filing fee.

### Conclusion

For the reasons set out above, the tenant's application for an order cancelling a notice to end the tenancy for cause is hereby dismissed without leave to reapply.

The tenant's application for an Order of Possession of the manufactured home site is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlord provide access to (or from) the manufactured home site for the tenant or the tenant's guests is hereby dismissed without leave to reapply.

The tenant's application for an order that the landlord return the tenant's personal property is hereby dismissed with leave to reapply.

I hereby grant an Order of Possession in favour of the landlord on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: January 12, 2017

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Residential Tenancy Branch