



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute code            CNC

### Introduction

This hearing was convened to deal with an application by the tenant filed June 5, 2017 under the *Manufactured Home Park Tenancy Act* (the “Act”). The tenant seeks cancellation of a 1 Month Notice to End Tenancy for Cause dated June 1, 2017 (the “1 Month Notice”).

An advocate for the tenant attended the hearing along with the tenant. The manufactured home park manager, its owner, and a witness attended the hearing on behalf of the landlord. Both parties had full opportunity to be heard, to present affirmed testimony, to make submissions and to present documentary evidence.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

### Background and Evidence

No written tenancy agreement was in evidence. It was agreed that this tenancy began in 1991 or 1992. Current rent is \$396.50 and is due on the first of the month. This is a month to month tenancy.

The 1 Month Notice indicates that the tenant has “significantly interfered with or unreasonably disturbed another occupant or the landlord.” The tenant acknowledged receiving the 1 Month Notice on June 1, 2017.

### *Landlord’s evidence*

The landlord says that the applicant tenant has a history of problematic behaviour in the manufactured home park. It says that when it purchased the park there was a large file on the tenant recording concerns. However, the landlord did not submit any evidence of

historical concerns or describe any other problematic conduct by the tenant. The landlord says that it did not do so because the problematic conduct took place before the new owner purchased the park, approximately 3.5 years ago.

In support of its allegation of cause, the landlord relied only on a 2015 letter written from the tenant to her new neighbours in #18 and on two interactions with them in late May of this year.

In the 2015 letter the applicant asks her neighbours not to use their wood stove because the smoke bothers her. The letter is perhaps longer than necessary but is largely respectful.

Management wrote the applicant tenant a letter in response, asking her to direct concerns to management rather than to her neighbours and defending the neighbour's right to use their wood burning fireplace in detail. A copy of that letter was also in evidence. It closes with the following: "Any further direct correspondence to your neighbour in #19 shall be considered harassment."

Management submits that it is not appropriate for the tenant to attempt to control her neighbours use of wood heat, and that her attempt to do so represents "significant interference." Management also complains that the tenant subsequently provided it with further information on the dangers of wood smoke.

The landlord's manager testified that on May 30, 2017 another neighbour reported an argument between the applicant tenant and #18. The manager said that she called the residents of #18, and inquired about what had happened. After hearing what had happened, she advised #18 to call the police.

The landlord's evidence included a statement from the family residing at #18, recounting the events of May 30 and 31, 2017. They say that on May 30, the applicant tenant yelled at them to clean up their back yard, and they responded that it was not her job to tell them their yard required attention. They further say that the tenant then told them that no one in the park liked them and called them "rats" for having gone to management with a concern rather than directly to her. They say that they responded, and the applicant tenant then called the female neighbour, LM, a "slutty bitch" and lunged at her while she was holding her young son. The husband stepped in between and cautioned the applicant tenant against "ever trying to put her hands on his family again." The applicant tenant then said that she would make their lives a "living hell" if they did not follow her rules.

Their written statement also records that they called the police after the May 30 incident. It further states that there was another incident on May 31. They say that the applicant tenant started photographing their home, they asked her to stop and leave their property, and that she would not stop yelling. They called the police again after this interaction.

LM gave oral testimony consistent with the written statement. She also said that she suspected the tenant of doing “silly things” like throwing pine cones into their garden and a bag of grease into their back yard and that the tenant has photographed their son, who is seven, and makes faces at him. She stated also that she believes the applicant’s tenancy should end and that she is a “pain.” She said that the police officers who responded to her report “recommended” that she apply for a protection order.

The manager testified that she attempted to speak with the applicant tenant about what had happened but was unable to connect with her at home. She did not leave a note or a phone message asking to meet. The 1 Month Notice was issued the day after the May 31, 2017 incident.

#### *Tenant’s response*

The tenant’s advocate in response submitted that the tenant’s conduct in late May is not sufficient to qualify as unreasonable or significant interference. He challenged LM’s testimony, suggesting it was more like a story than an account of what actually happened. He asked LM if anything further had happened since the May interactions, and LM suggested that the applicant tenant has “fingered her.” The advocate pointed out there is no record of written complaints from any tenants, including LM, either before or after the May interactions.

In oral testimony the tenant suggested that if she had actually lunged at LM as alleged, the child in her arms would have cried or otherwise responded. In written submissions the tenant gave a much more detailed account of the day, including an account of her interactions with the male tenant. In those submissions the tenant records that when she saw the neighbours in their front yard she “asked them very politely if they would mind cutting the branches of their tree that were breaking my fence in the back and hanging over 4 feet. I offered to help them prune or do it together . . . The kids have blocked off their own access to their back yard and do not use it so I simply wanted to let them know . . .”. The tenant also suggests that the male tenant in #18 took offense at her not liking their wood stove and that she finds him intimidating at times.

The tenant said that on May 31, her neighbours approached her, she did not approach them, and that she was photographing her own property. She said that she was upset by the interaction and called the police and left a message which was not returned. Again, the tenant in written submissions provided more detail.

The tenant further says that management is attempting to terminate her tenancy in retaliation for her advocacy with respect to another legal matter.

The tenant submitted RCMP narrative synopses for both May 30 and 31. These report only the allegations of both parties and there is little sense of the RCMP officer's views. Notably, the report for May 30 does not set out LM's allegation that the applicant lunged at her and her child and was blocked by her husband. It does state: "Cst. . . . spoke to [LM] who ask for a restraining order. Cst. . . . explained that this does not meet the requirements for a Sec. 810 peace bond, [LM] could only apply through civil court for a protection order . . ." It continues: "Cst. . . . called [applicant tenant] who stated the complete opposite, stating she was verbally attacked by [LM]. Cst. . . . informed [applicant] that obviously the two cannot get along and best solution is for neither party to communicate with the other and if there are problems to speak to the park manager about it."

The May 31 RCMP synopsis records another call from #18: "Cst. . . . attended and spoke with owner, who stated that she cannot even go outside of the house because . . . [applicant tenant] . . . at one point threatened to make their life a living hell if they did not abide by her rules regarding her gardens. . . Cst. . . . also asked other neighbours about [applicant's] behaviour and was advised that [applicant tenant] is infamous when it comes to neighbouring issues. At this time, Cst. . . . is not convinced that it meets the threshold for criminal harassment and advised [LM] to . . . initiate protection order process." It also records that the applicant tenant was then advised not to have any contact with #18.

### Analysis

Section 40(1)(c)(i) of the Act allows a landlord to end a tenancy for cause where the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

Unless the tenant agrees that the tenancy will end, the tenant must dispute a notice under this section by filing an application within 10 days of receipt. In this case, the

tenant received the 1 Month Notice on June 1, 2017 and applied to dispute it on June 5, 2017. The tenant is therefore within the timeline.

Once a tenant disputes a notice, the burden of proof is on the landlord on a balance of probabilities to establish the cause alleged. Although the tenant's alleged conduct is concerning, I am not satisfied that all of the allegations are true. Nor is the landlord's evidence sufficient to establish a breach of the applicable section.

The tenant's letter to her neighbours asking them not to use their wood stove was not unreasonable or disruptive. It was a request the tenant was free to make and her neighbours were free to disregard. The landlord's caution to the applicant tenant that additional contact with her neighbours would be considered "harassment" seems extreme. Nor is there anything particularly disruptive in the tenant's having additional information about the dangers of wood smoke sent to the landlord. Again, this was information the landlord was free to disregard.

Threatening violence is more serious. However, the applicant tenant denies lunging at LM, and the alleged lunge is not recorded in the police report of the May 30 interaction. This suggests that LM did not report the lunge to police, either because she did not consider it serious or because it did not occur.

Threatening to make her neighbour's life a living hell if they do not comply with her gardening rules is somewhat serious. However, in these circumstances I cannot accept that it is sufficient to end a tenancy of 27 years. There is no evidence of any other issues serious enough to involve the landlord since this landlord has owned the park. Any issues that may have been reported to or documented by the prior owner were not in evidence, and it is unlikely they would have carried much weight if they had been, in light of the time that has passed.

Although it was not addressed in detail during the hearing, the tenant's written account of both May 30 and May 31 is as convincing as LM's account, and suggests that this is a relationship where tempers have flared on both sides.

The landlord in written submissions says that "the incidents" with the applicant tenant "have escalated to the point of threats of violence toward a young mother holding her child and her family." It further states that "[t]his is not an isolated incident and the property owner and management find it necessary to act . . . in order to maintain the integrity of the park and the quiet, peace and enjoyment within the park for all

residents.” However, the landlord has not put forward any additional evidence to establish that the May 30/31 interactions were anything but isolated.

As set out above, the landlord’s reaction to the applicant’s 2015 letter to unit #18 seems out of proportion. This leads me to believe that its reaction to the incidents in late May of this year may also be out of proportion.

The May 31 RCMP synopsis suggests that LM’s account of May 30 is already being generalized by May 31. The officer reports LM recounting that “at one point” (which is to say, the day before), the applicant tenant “threatened to make her life a living hell” if she did not comply with the gardening rules. It also records LM reporting that she is afraid to leave the house for fear of the applicant tenant generally, when the incident happened only the day before.

I also note that LM testified that she was advised to apply for a peace bond, but did not say that she had done so. LM also characterized the applicant as doing “silly little things” and as a “pain.” This language does not suggest serious or unreasonable disruption.

I also note that the manager admitted during the hearing that she did not know exactly what had happened between the parties in late May, as she had not asked the applicant tenant about this directly or given her an opportunity to respond to her neighbours’ allegations before issuing the 1 Month Notice.

This tenancy has lasted approximately 27 years. This landlord has owned the property for over three years. The only evidence of disruption or interference by the tenant concerns the events of May 30 and 31. It is not clear that the tenant physically threatened LM on May 30. I accept that she yelled at her neighbours, but that interaction was clearly heated on both sides. Both parties must do their best to be cooperative and respectful when living together in such close proximity.

The RCMP officer’s statement that “obviously the two cannot get along and best solution is for neither party to communicate with the other” seems good advice.

The tenant is cautioned that any further conflict with or disrespectful conduct towards her neighbours is likely to result in another application to end the tenancy. Both parties are advised to refrain from communicating with one another and to direct any and all concerns to management.

The tenant clearly has her own concerns about the management of the park. I also understood her to say that she was involved in legal action against the landlord. Both parties are reminded that they are free to come to a mutual agreement to end the tenancy on a date of their choosing.

In summary, the landlord has not established on a balance of probabilities that there is cause to end the tenancy. Accordingly, I cancel the landlord's 1 Month Notice.

### Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The landlord's 1 Month Notice is cancelled. The tenancy will continue until ended in accordance with the Act.

However, the parties are free to negotiate a mutual agreement to end the tenancy on a specified date.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided.

Dated: August 1, 2017

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Residential Tenancy Branch