



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes          CNC, OLC, O

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated July 14, 2017 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- other unspecified remedies.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

This hearing lasted approximately 79 minutes in order to allow both parties to fully present their submissions, due to an adjournment request by the tenant, a jurisdictional argument made by the tenant, and due to repeated interruptions from the tenant throughout the hearing.

The landlord confirmed receipt of the tenant's application for dispute resolution and hearing notice and the tenant confirmed receipt of the landlord's written evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's written evidence package.

The landlord confirmed that she did not receive the tenant's written evidence package prior to the hearing. I did not either. The tenant claimed that he emailed it to the landlord on October 22, 2017, two days before the hearing. He said that he sent a copy to the Residential Tenancy Branch ("RTB") on October 23, 2017, one day before the hearing. I notified both parties that I would not consider the tenant's written evidence at the hearing. The landlord did not receive the evidence and the tenant did not serve the landlord using a proper method, as email is not recognized under section 88 of the *Act*. The evidence would also have been late, as it would not have been received at least fourteen days prior to the hearing, as required by Rule 3.14 of the RTB *Rules of Procedure*.

The landlord testified that she served the tenant with the 1 Month Notice on July 14, 2017, by way of posting it to his rental unit door. The tenant confirmed receipt on July 26, 2017, after he returned from evacuating the area due to local wildfires. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on July 26, 2017.

#### Preliminary Issue – Jurisdiction

At the outset of the hearing, the tenant raised a jurisdictional argument, indicating that I did not have authority to hear his application because this was a business dispute, rather than a residential tenancy issue. He said that he operated a website for overnight rentals for the landlord and that she told him to shut down the account and vacate the rental unit. He also said that the landlord named on the 1 Month Notice and in his application was not his "true" landlord because her ex-husband was the co-owner of the trailer park and he was the person that all the rent cheques were addressed to.

The landlord disagreed, indicating that while there was a business disagreement between the parties, the tenant was given the 1 Month Notice for other reasons as well, including disturbing other occupants and the landlord for tenancy-related issues. The landlord explained that she is a co-owner of the trailer park with her ex-husband, and that she is a proper landlord. She said that she manages the day-to-day operations of the park, as her ex-husband is seldom involved, having only spent a total of four hours at the trailer park in the last year. She also claimed that while the tenant's rent cheques may be addressed to her ex-husband, she is the one who deposits the cheques, as they are received on behalf of the tenant from the Ministry. She said that the tenant comes to her with complaints regarding other occupants of the trailer park and advises her that she is the landlord that is required to deal with these issues.

I find that while the parties may have had a business dispute, the 1 Month Notice and this application primarily involve residential tenancy issues between the parties. The landlord provided written complaint letters from other tenants in the trailer park regarding the tenant's behaviour, as well as her own written evidence about tenancy issues involving the tenant.

I find that the landlord named in this application is the proper landlord for this rental unit. She is a co-owner of the rental unit and the trailer park. She is named on both the 1 Month Notice and the tenant's application as a "landlord" and "respondent." Both co-owners of the trailer park do not need to be named on the 1 Month Notice in order for it to be effective. The landlord can act as an agent for the other co-owner. The tenant did not even name the other co-owner as a "landlord-respondent" in his application, despite claiming that he was the proper landlord. The landlord deals with the day-to-day operations of the trailer park, cashes the tenant's rent cheques and addresses the tenant's complaints about the trailer park regarding tenancy issues.

During the hearing, I informed both parties that I found that I had jurisdiction to hear the tenant's application for the above reasons.

Preliminary Issue – Adjournment Request by Tenant

At the outset of the hearing, the tenant requested an adjournment. He said that he wanted to make requests under the *Freedom of Information and Protection of Privacy Act* ("FOIPPA") for police reports in order to discredit the "character" of another occupant, "F," at the trailer park who wrote a complaint letter about the tenant and "coached" other occupants to do so. He said that a police officer told him on October 20, 2017, that F had been charged with crimes and it happened recently so he needed time to request the police files.

The tenant also stated that he wanted his advocate to assist him with this hearing but he was busy with another hearing today so he needed it rescheduled to a new date and time. He said that his advocate told him that he did not need to submit any evidence for this hearing and he would get an adjournment. He claimed that his advocate would deal with the "legal" implications of the hearing after it was over and the tenant would "appeal" my decision if it "doesn't go my way." I notified the tenant that the RTB review process was not to be used to delay the proceedings or abuse the process because the tenant disliked or disagreed with my decision. The tenant said that he and his advocate would still appeal my decision if it was not favourable to him.

The tenant also claimed that the landlord was not the proper landlord for his tenancy and that her ex-husband, who is the co-owner, disagreed with her decision to attempt to evict the tenant with a 1 Month Notice.

The landlord opposed the tenant's adjournment request, stating that the tenant was served with the 1 Month Notice in mid-July 2017 and had more than enough time to find an advocate to attend the hearing on October 24, 2017. She also claimed that she was the rightful landlord for this property and that she attempted to discuss the 1 Month Notice with her ex-husband but he hung up the phone on her. She said that any police reports that the tenant was attempting to obtain were irrelevant because they had nothing to do with this application.

During the hearing, I advised both parties that I was not granting an adjournment of the tenant's application. I did so after taking into consideration the criteria established in Rule 7.9 of the *RTB Rules of Procedure*, which includes the following provisions:

*Without restricting the authority of the arbitrator to consider the other factors, the arbitrator will consider the following when allowing or disallowing a party's request for an adjournment:*

- *the oral or written submissions of the parties;*
- *the likelihood of the adjournment resulting in a resolution;*
- *the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment: and*

- *whether the adjournment is required to provide a fair opportunity for a party to be heard; and*
- *the possible prejudice to each party.*

I find that the tenant filed this application on his own accord, as no one required or forced him to do so. At the time of that filing on August 2, 2017, the tenant was immediately notified of this hearing date on October 24, 2017. The tenant had almost three months to prepare for this hearing and to gather any relevant evidence to submit with his application. Police reports are not required for this hearing as evidence. The landlord did not submit any police reports so the tenant is not attempting to respond to any evidence. The tenant was free to ask the police officer that he spoke with on October 20, 2017, to testify as a witness on the tenant's behalf at this hearing, but chose not to do so.

The tenant also had ample time to obtain an advocate to assist him with this hearing and if the advocate was unavailable, he could have found someone else to assist him or represented himself, as he is not required to attend this hearing with an agent.

As noted above, I found that the landlord was the proper landlord for this rental unit and if the co-owner disagreed with her decision to issue the 1 Month Notice, he could have appeared at this hearing to testify on the tenant's behalf as a witness, since the tenant confirmed that he notified the co-owner of this hearing date and time. The tenant confirmed at the outset of this hearing when asked, that he had no witnesses to testify on his behalf at this hearing.

I also find that this is an urgent order of possession issue which must be dealt with expeditiously, rather than a monetary application which is not an urgent matter.

After providing my oral reasons, the tenant claimed that he agreed with my reasons for denying his adjournment request and asked me to proceed with the hearing.

#### Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order requiring the landlord to comply the *Act, Regulation* or tenancy agreement?

Is the tenant entitled to other unspecified remedies?

#### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on May 13, 2013. Monthly rent in the amount of \$668.00 is payable on the first day of each month and the tenant pays a half portion of \$334.00 while his roommate pays the other half portion. The tenant continues to reside in the rental unit. The rental unit is a trailer situated on a pad in a trailer park. The tenant rents the trailer and pad from the landlord.

The landlord said that she signed a written tenancy agreement with the tenant. The tenant said that he did not sign a written tenancy agreement, he only provided a shelter form to the landlord. The tenant claimed that he paid a security deposit of \$150.00 to the landlord, while the landlord said that it was \$125.00. The landlord continues to retain a security deposit from the tenant.

Both parties agreed that the landlord issued the 1 Month Notice, with an effective move-out date of August 31, 2017, to the tenant for the following reasons:

- *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 or lawful right of another occupant or the landlord;*
- *Tenant has engaged in illegal activity that has, or is likely to:*
  - *jeopardize a lawful right or interest of another occupant or the landlord.*

The tenant seeks to cancel the landlord's 1 Month Notice. The tenant also requested "other unspecified remedies" and an order requiring the landlord to comply the *Act, Regulation* or tenancy agreement.

The landlord said that the tenant worked for her in managing an online account to have guests rent overnight accommodations at the trailer park in an "air b'n'b" type of arrangement. She said that the tenant locked her out of the account and stole money from her so she asked him for the key back and to dissolve their business relations. She said that when he refused, she called the police. The tenant stated that he worked for the landlord and there was a business dispute when she asked him to cancel all reservations and then she refused to pay the charges to do so.

The landlord claimed that matters escalated since then, as the tenant began stealing vegetables from her garden, yelling at her and calling her names, fighting with other occupants, reneging on business agreements with other occupants and disturbing the peace and quiet enjoyment of the occupants in the trailer park. The tenant denied these allegations, claiming that he only has

disputes with F, who is a criminal, and that the tenant has lived peacefully at the rental unit otherwise.

The landlord provided her own notes, as well as letters from five other occupants at the trailer park who were negatively affected by the tenant's behaviour. The tenant disputed these letters, indicating that the landlord wrote them herself or her and F coached the other occupants to write these letters. He also claimed that F was charged with criminal offences and was under arrest as of October 20, 2017, so his character was questionable.

### Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant said that he received the 1 Month Notice on July 26, 2017, and filed his application to dispute it on August 2, 2017. Therefore, he is within the time limit under the *Act*. The onus, therefore, shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

On a balance of probabilities and for the reasons stated below, I find that the landlord proved that the tenant significantly interfered and unreasonably disturbed the landlord and other occupants at the trailer park.

I accept the landlord's evidence that the tenant has been accused of stealing items from other occupants, has been reneging on his arrangements with other occupants, has threatened and fought with the landlord and other occupants, and has been involved in physical altercations with other occupants at the trailer park, causing them a loss of quiet enjoyment.

I accept the landlord's written evidence that at least five other occupants complained to the landlord about the tenant's behaviour. The landlord provided a copy of all five letters, one of which was from F. I do not accept the tenant's allegation that these letters were written by the landlord or that the landlord and F coached these people into writing letters. The writing of four of the five letters is completely different than the landlord's and F's handwriting.

One of the written letters provided by the landlord recounts a dispute between the tenant and F, where the occupant saw the tenant throw a rock at F and F responded by pointing his cane at the tenant. F produced a letter recounting a physical altercation where the police were called and no charges were laid because he was found to be defending himself against the tenant. F claimed to have left the trailer park because of the tenant disturbing his quiet enjoyment. Another occupant recounted how she was threatened by the tenant not to write a letter for this hearing, or she would get 17 years in jail for lying.

Even if I disregard F's complaint letter and accept the tenant's assertion that F has been charged with criminal activity at the trailer park, which the tenant failed to prove with

documentary or other independent evidence, this is not a criminal conviction and there are still four other people who have complained about the tenant's disruptive behaviour.

I find that the tenant's behaviour is more than just a business disagreement with the landlord. The landlord confirmed in her written evidence that the tenant called her vulgar names, ripped vegetables from her garden and yelled at her on numerous occasions. There are letters from other occupants witnessing the disputes between the landlord and the tenant in the trailer park.

As I have found that one of the reasons indicated on the landlord's 1 Month Notice is valid, I do not need to consider the other reasons on the notice.

Therefore, I dismiss the tenant's application to cancel the landlord's 1 Month Notice, dated July 14, 2017. As per section 55 of the *Act*, if I dismiss the tenant's application to cancel the 1 Month Notice, I must issue an order of possession to the landlord, provided that the 1 Month Notice complies with section 52 of the *Act*. I find that the 1 Month Notice complies with section 52 of the *Act*.

I find that the landlord is entitled to an order of possession, pursuant to section 55 of the *Act*, effective at 1:00 p.m. on November 30, 2017. The landlord requested this date for the order of possession, if she was successful, stating that she was willing to give the tenant more time to vacate the rental unit.

I dismiss the tenant's application for "other unspecified remedies" and an order requiring the landlord to comply the *Act*, *Regulation* or tenancy agreement because he did not provide any evidence about these claims at the hearing.

### Conclusion

I grant an Order of Possession to the landlord effective **at 1:00 p.m. on November 30, 2017**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia. The tenant's entire application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 24, 2017

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Residential Tenancy Branch