



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Home Park Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Tenant entitled to its cancellation?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The following are undisputed facts: The tenancy started in 1997. Pad rent of \$404.00 is payable on the first day of each month. In a Decision dated October 5, 2017 the Tenant was ordered to remove his dog from the home park within a reasonable time. The Tenant received the Decision containing the order on October 13, 2017. On November 4, 2017 the Landlord served the Tenant with a one month notice to end tenancy for cause (the “Notice”) by posting the Notice on the door. The reason set out on the Notice is non-compliance with an order under the legislation within 30 days after the Tenant received the order or the date in the order.

The Landlord states that the Tenant did not remove the dog and that it was last seen by the Landlord on December 24, 2017. The Witness for the Landlord states that the dog was seen on several occasions between October and November with the dog last seen in the Tenant's yard on November 24 or 25, 2017.

The Tenant states that shortly after receiving the Decision the Tenant removed the 3 month old dog to another location that the Landlord is moving to. The Tenant states that he continues to be moving to this location. The Tenant states that he spends over 75% of his time at this other location. The Tenant states that the dog was only brought to the home park once for an overnight stay on November 24, 2017 due to not having someone available to care for the dog. In January 2018 the dog died in a car accident. The Tenant states that on the one occasion in October 2017 when the dog was outside the yard the dog presented no danger to anyone and the Tenant was with the dog.

The Landlord states that a second identical notice to end tenancy for cause was given to the Tenant later in November 2017 as the first Notice did not give the Tenant 30 days from the date of receipt of the Decision.

### Analysis

Section 40(1)(k) of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, the tenant has not complied with an order of the director within 30 days of the later of the following dates:

- (i) the date the tenant receives the order;
- (ii) the date specified in the order for the tenant to comply with the order.

There is no date specifically ordered for the removal of the dog beyond a reasonable time. The first Notice was served before the 30 days had passed from receipt of the Decision. I do not consider the Landlord's actions in serving another notice simply to perfect the time line for the issuance of the Notice as valid. There is no evidence of any compelling reason why the dog, essentially a puppy, had to be removed sooner than

December 2017 or even January 2018 and had there been such compelling reason I consider that the Order would have contained a date for removal. Finally, I consider that the dog is no longer alive. For these reasons I find that the neither Notice is valid and that the Tenant is entitled to a cancellation of the Notices. The tenancy continues.

As the Tenant has been successful with its application I find that the Tenant is entitled to recovery of the \$100.00 filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of the claim.

### Conclusion

The Notices are cancelled and are of no force or effect.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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 25, 2018

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Residential Tenancy Branch