



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC OLC FF

### Introduction

This hearing was convened in response to the tenant's applications pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for Orders as follows:

- cancellation of a One Month Notice to End Tenancy For Cause, pursuant to section 40;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 55;
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions.

The landlord served the tenant with the One Month Notice on September 27, 2017. The tenant's application was filed within the time period required under the Act.

### Preliminary Issue – Scope of Application

*Residential Tenancy Branch Rules of Procedure*, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply.

Aside from the application to cancel the Notice to End Tenancy, I am exercising my discretion to dismiss the remainder of the issues identified in the tenants' application with leave to reapply as these matters are not related. Leave to reapply is not an extension of any applicable time limit.

### Issues

Should the 1 Month Notice be cancelled or is the landlord entitled to an order of possession?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

The rental unit is a pad on which the tenant's manufactured home is located. The tenancy began on September 1, 2005.

The landlord issued the One Month Notice on the grounds that the tenant significantly interfered with and unreasonable disturbed another occupant. The landlord's representative submits that on September 12, 2017 the tenant assaulted another occupant K.R. who attended this hearing as a witness.

K.R. testified that on the date in question, she was working outside her home to try to fix a chain link fence which had been pulled down. The tenant approached her and started yelling and swearing all while filming the incident. The tenant grabbed her arm and pulled her towards herself and kicked her in the chest. K.R. testified that she never crossed the fence line and she was only leaning over it to pull the fence wire up from the tenant's side. K.R. testified that no one else was around to witness the incident.

The Landlord C.W. testified that she spoke to the other occupant K.R. following the incident and noticed scratches on her arm. The following day she filed a report with the police. She continued to gather information in regards to the incident before issuing the One Month Notice. She testified she asked for a copy of the police report but did not get a copy. No charges were laid by the police. She did not submit any documentation of the scratches she observed as she didn't have a picture at that time.

The tenant submitted a video clip of the incident. The tenant testified that the video shows her approaching K.R. and questioning her on what she was doing. The tenant testified she was concerned with K.R. pulling ta her fence as she was concerned for the safety of her children as there a steep embankment on the other side. The tenant submits the video does not show her screaming or yelling as alleged by K.R. The tenant submits the video shows K.R. leaning over and pulling on the tenant's side of the fence. The tenant submits K.R. can be heard uttering profanities at her. The tenant submits it was K.R. that came at her and she only put her hands in the air to block her. The tenant testified that she never placed her hands on K.R. nor kicked her as alleged. The tenant acknowledges speaking to the police after the incident. The tenant argues the

landlord submitted no pics of the alleged scratches or any doctor's note etc. The tenant testified that the day prior to this incident, it was her that had filed a police report as she was being threatened by K.R. The tenant submitted a police file number for this report. The tenant submits she filed this report in case K.R. followed through with her threats and that's exactly what happened on the day of the incident.

The tenant's witness K.S. testified that he was approaching the tenant's property at the time of the incident and heard yelling. He witnessed K.R. screaming at the tenant and seen her moving towards the tenant. The tenant backed up putting her leg up and her fist up in the air.

The tenant's witness A.M., who is also the tenant's husband, testified he was out on the front porch having a smoke at the time of the incident. He testified that the tenant went out to confront K.R. He only heard K.R. screaming about the fence. He witnessed the tenant putting her foot up to block K.R. from her hitting her. He testified that he didn't go out back when he heard the yelling because he didn't feel the need to do so and everything happened within a matter of seconds. He testified that the tenant was going to confront K.R. because this wasn't the first time she was taking down the fence on their side of the property.

### Analysis

Section 40 of the Act contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 40(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. If the tenant makes such an application, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

I find the landlord has not presented sufficient evidence to establish that the tenant assaulted K.R. The video evidence submitted on file does not show the tenant kicking K.R. The landlord did not submit a copy of the police report documenting the initial report of the incident. No charges were laid with respect to the incident. The landlord also did not submit any documentation of the alleged scratches sustained by K.R. I prefer the tenant's testimony over that of K.R. as the video evidence does not support K.R.'s version of events that the tenant was yelling and screaming as she approached her. The tenant appears to be simply questioning K.R. on why she is removing the fence on her side of the property. The video also clearly shows K.R. adjusting the fence on the tenant's side of the property.

Accordingly, I find the landlord presented insufficient evidence to justify that she had cause to issue the One Month Notice.

As the tenant was successful in this application, I find that the tenant is entitled to recover the \$100.00 filing fee paid for this application from the landlord. **The tenant may reduce a future rent payment in the amount of \$100.00.**

Conclusion

I allow the tenant's application to cancel the landlord's One Month Notice, dated September 27, 2017, which is hereby cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

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 14, 2018

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Residential Tenancy Branch