



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, MNDC, FFT

### Introduction

This hearing dealt with the tenants' application pursuant to the *Manufactured Home Park Tenancy Act* (the "Act") for:

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 40;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 55;
- A monetary award for damage or loss pursuant to section 60; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing and were each given a full opportunity to present affirmed testimony, to make submissions, present evidence and to call witnesses. The tenant was represented by their agent RW (the "tenant"). The landlord was primarily represented by his agent JP (the "landlord").

As both parties were present service of documents was confirmed. The parties confirmed receipt of the landlord's 1 Month Notice dated February 7, 2018, the tenant's application for dispute resolution and the evidentiary materials. Based on the testimonies I find that the tenant was served with the 1 Month Notice and landlord's evidence and the landlord was served with the tenant's application for dispute resolution and evidence in accordance with sections 81 and 82 of the *Act*.

### Preliminary Matter – Combining Applications and Adjournment Request

At the outset of the hearing, the landlord made an oral request that the hearing be adjourned. The landlord has filed a cross-application under the file number on the first page of this decision on April 18, 2018. A hearing date for that application has not yet been scheduled. In that application the landlord seeks an Order of Possession enforcing the 1 Month Notice and recovery of filing fees for their application. The landlord explained that they have not yet served that application and there is additional evidence they wish to submit in support of that application. The landlord requested that the two applications be heard together at a later date when the landlord has prepared their evidence. The tenant consented to the matters being combined but did not consent to the hearing being adjourned and rescheduled.

Rule 2.10 of the Residential Tenancy Branch Rules of Procedure grants me the authority to join applications for dispute resolution and hear them at the same hearing. As the parties consent to the matters being combined and I find that the applications pertain to the same 1 Month Notice, the same facts would be considered and the relief sought in each application are similar I order that the matters be combined.

While the landlord testified that they have not yet served the application for dispute resolution on the tenant I find that pursuant to section 64(3) of the *Act* the application has been sufficiently served.

Rule 7.8 of the Residential Tenancy Branch Rules of Procedure grants me the authority to determine whether the circumstances warrant an adjournment of the hearing.

Rule 7.9 lists some of the criteria to consider:

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

The landlord submits that they have additional evidence they have not prepared as the witnesses have not provided authorization to the landlord that correspondence and complaints made by them can be submitted. The landlord testified that they did not file their application at an earlier date as they were unfamiliar with the process.

Under the circumstances I do not find that the landlord has met the criteria established for an adjournment. The landlord was served with the tenant's application to cancel the 1 Month Notice in February, 2018. I find that the landlord had ample time to obtain the consent of witnesses if they intended to rely on their written statements. The landlord did not provide evidence as to when they began preparing the evidence and why they were unable to be prepared for the present hearing. I find that any deficiency in the evidence arises from the landlord's neglect rather than circumstances beyond their control. Each party has the onus to prepare for the hearing including submitted documentary evidence and preparing witnesses if they choose. I find that the landlord has not shown why they were unable to prepare for the present hearing. For this reason I find that the landlord has not met the criteria for granting an adjournment and proceeded with the hearing.

#### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Is the tenant entitled to a monetary award as claimed?

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

#### Background and Evidence

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

The tenant is a resident in the manufactured home park operated by the landlord. The tenant submits that they have been a target of harassment by the park manager who has issued numerous baseless complaints and aggressive behaviour. The tenant submits that due to the landlord's continued harassment they have suffered considerable stress and physical ailments. The tenant denies that there is any basis for the landlord to issue the 1 Month Notice.

The landlord stated that there have been numerous complaints made about the tenant from several of the residents of the park. The landlord said that the complaints include issues such as noise complaints about the tenant playing music loudly and at inappropriate hours, the condition of the yard and aggressive interactions with other

residents. The landlord said that there was a verbal altercation in February, 2018 when the tenant threatened the park manager with a death threat. The landlord submits that the tenant's behaviour has transgressed to the point where the park manager is unable to perform his functions and other residents are fearful for their own safety.

### Analysis

Section 40 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the present case the landlord must show that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord testified that they have received numerous complaints about the tenant's behavior including loud music and the condition of his yard. The landlord specifically points to an altercation between the tenant and the property manager where aggressive death threats were uttered as reason for this tenancy to end.

I find that the landlord has not shown on a balance of probabilities that there is a basis for ending the tenancy. The tenant characterized the landlord's evidence that there has been unreasonable disturbance of other occupants as untrue. The tenant submits that they have a good relationship with their neighbors other than the park manager who has engaged in targeted harassment and baseless accusations. The landlord testified that they have had multiple complaints from several residents. Based on the totality of the evidence submitted I find that the landlord's evidence does not support the issuance of the present 1 Month Notice.

I accept the evidence of the parties that there is an ongoing conflict between residents of the park. I do not find that the evidence submitted clearly shows that the tenant has significantly interfered with the rights of the other occupants of the park. Much of the evidence provided by both parties consists of hearsay, conjecture and general accusations. While some documentary evidence was provided I find they are not wholly persuasive. The parties have testified that police have attended on occasions due to

the continuing conflict but there is insufficient evidence that they have found any one party at fault.

While I find that there is an ongoing acrimonious relationship between the park manager the tenant and some of the other residents, I am not satisfied that the evidence shows the tenant has unreasonably disturbed another occupant to such an extent that it gives rise to a reason to end this tenancy.

Accordingly, I allow the tenant's application to cancel the 1 Month Notice.

I find that there is insufficient evidence in support of the other portions of the tenant's application. The tenant characterizes his treatment at the hands of the landlord and the park manager as bullying and harassment. However, I find that there is insufficient evidence to show that the landlord has breached the Act, regulations or tenancy agreement such that an order that they comply is necessary. Similarly, I find that there is insufficient evidence that there has been a breach that would give rise to a monetary award.

Section 67 of the *Act* allows me to issue a monetary award for loss resulting from a party violating the Act, regulations or a tenancy agreement. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention on the part of the other party. The claimant also has a duty to take reasonable steps to mitigate their loss.

I find that the tenant has provided insufficient evidence in support of their claim. Based on the totality of the evidence it is clear that there is an ongoing conflict between the tenant and other occupants of the park. While the tenant characterizes himself as a victim of the targeted harassment I find that there is insufficient evidence in support of that view. I find that there is insufficient evidence to determine that the landlord has breached the Act, regulations or tenancy agreement to give rise to the tenant's claim. Consequently, this portion of the tenant's application is dismissed.

As the tenant was not wholly successful in their application I decline to issue an order for recovery of filing fees.

## Conclusion

The landlord's application is dismissed without leave to reapply.

The 1 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The balance of the tenant's 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 *Manufactured Home Park Tenancy Act*.

Dated: April 25, 2018

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Residential Tenancy Branch