



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMAX REALTY REMAX  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Manufactured Home Park Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”).

An agent for the Landlord (the “Landlord”) and the Tenant were both present for the duration of the teleconference hearing. The Landlord testified that the Tenant served them with the Notice of Dispute Resolution Proceeding package in person at their office. The Landlord confirmed that a copy of their evidence was served to the Tenant by posting it on his door. The Tenant did not submit any evidence prior to the hearing.

Although the Landlord stated during the hearing that photos were submitted as part of their evidence package, the Tenant stated that he did not receive copies of these and they were not received by the Residential Tenancy Branch either. Both parties were notified of this during the hearing and were aware that no photos were included in evidence.

Both parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be set aside?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

### Background and Evidence

The Landlord testified that their company took over management of the property approximately one year ago. They stated that no tenancy agreement was passed along to them so they are unsure of when the tenancy began. The Tenant stated that he has resided on the property for approximately two years. The parties were in agreement that monthly rent is \$550.00.

The Landlord provided testimony that they received a complaint letter from other tenants in the manufactured home park complaining of disturbances from the Tenant. The letter, dated May 14, 2018, was signed by six other tenants in the park and was submitted into evidence.

The letter signed states concerns with the children of the Tenant bringing “undesirable people” to the property, the police being called on numerous occasions to deal with fights that occurred due to drinking, and garbage outside on the property.

The Landlord also submitted a warning letter from the Landlord dated April 6, 2018 that states the following: ‘It has been brought to our attention that you have a family member that is disturbing the other occupants in the park. This must stop or you may be evicted.’

Another warning letter, dated April 19, 2018 was provided to the Tenant and included in evidence. This letter states the following, ‘After a recent drive through of the Mobile Home Park it has been noted that your yard is not being kept in a clean, sanitary state. Ensure that the yard has been cleaned on or before May 7, 2018 at 5pm. Failure to do so will lead to an eviction.’

The Landlord testified that the Tenant's yard remains an issue and that no difference has been noticed since the issuance of the warning letter from April 19, 2018. The Landlord is worried about the health and safety concerns of the condition of the yard, including the increased risk of rodents on the property.

The Landlord is also concerned about the disturbances caused by the Tenant, such as a lot of traffic coming and going, police attending the property, noise and activity at late hours of the night and drinking and partying into the evening/early morning.

On May 17, 2018, the Landlord issued a One Month Notice by posting it on the Tenant's door. The One Month Notice, which was submitted into evidence, states the effective

end of tenancy date as June 30, 2018 and lists the following as the reasons for the notice:

- Tenant or 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

The Tenant provided testimony that his yard is clean, other than a container of scrap metal that he keeps outside and a couple of bins that he is storing for his daughter until she can move them.

The Tenant stated that he did not understand the concerns regarding the traffic on the property as that does not occur. He also stated that he does not have parties nor are there any disturbances caused from drinking on the property.

The Tenant stated that the police have attended his property three times for issues with his son who has some behavioural challenges, but otherwise the police have not attended the property. The Tenant testified that some of his neighbours have expressed fear towards the behaviours of his son, however his son is no longer residing on the property and therefore those concerns are no longer an issue.

The Tenant confirmed that he received the two warning letters from the Landlord, as well as the letter signed from the other tenants. He also confirmed receipt of the One Month Notice dated May 17, 2018, but does not recall what day he actually received it.

The Tenant expressed confusion over the reasons for the One Month Notice due to his statement that the yard has been tidied up since receiving the warning letter, and the disturbances should no longer be an issue now that his son is no longer residing in the home.

The Landlord also provided testimony that the Tenant has not paid rent for June or July 2018. The Tenant stated that he received advice to not pay the rent until the dispute over the One Month Notice had been resolved through a Dispute Resolution hearing.

### Analysis

Based on the testimony of both parties, and on a balance of probabilities, I find as follows:

I note that in accordance with Rule 6.6 of the *Residential Tenancy Branch Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove that the reasons for the notice are valid.

The Landlord and Tenant provided conflicting testimony regarding the issues listed on the One Month Notice, and whether they remain a current concern.

When two parties to a dispute provide conflicting testimony, the party with the onus of proof has the burden to provide sufficient evidence over and above their testimony to establish their claim. In the case before me, I find that the Landlord has failed to provide sufficient evidence to establish that the concerns noted on the One Month Notice are valid.

The Tenant stated that some of the concerns of the neighbours may have been from the behavior of his son, and that those concerns are resolved due to his son no longer residing with him. I find insufficient evidence from the Landlord to show that the disturbances are continuing now that the Tenant's son does not reside on the property.

I accept the two warning letters submitted into evidence by the Landlord. One of the letters notes disturbances from a family member and the other is based on the condition of the yard. I also accept the testimony of the Landlord that there are concerns with traffic, partying, police attendance and late night disturbances on the property. As such, I look to the evidence to see if these issues have been resolved or if they remain a concern.

As I have no evidence before regarding the current condition of the yard, other than the conflicting testimony of the parties, I cannot establish that it remains a concern. I also find no evidence before me that the disturbances from the family member are still a concern, that excessive traffic is coming and going, that the police are attending the home regularly, or that late night disturbances are occurring on the property.

Under Section 40(4) of the *Act*, a tenant has 10 days from receipt of the One Month Notice to file to dispute the notice. As the Tenant does not remember exactly what day he received the One Month Notice, I look to the deeming provisions outlined in the *Act*.

Section 83(3) states that when a document is served by posting it on the door, the document is deemed to be received three days after it was posted. I accept the Landlord's testimony that the notice was posted on the same day it was issued, May 17,

2018. Therefore, I find that the One Month Notice is deemed to have been received by the Tenant on May 20, 2018.

As the Tenant applied to cancel the One Month Notice on May 28, 2018, I find that he applied in the 10 days allowable under the *Act*, and was therefore in compliance with Section 40(4).

As I have determined that the Landlord did not provided sufficient evidence to prove, on a balance of probabilities, that the reasons for the One Month Notice are valid, I find that the Tenant was successful in their application to cancel the notice.

The One Month Notice dated May 17, 2018 is hereby cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

While the Landlord stated that rent has not been paid for June or July 2018, I find that this is not the matter before me. However, the Tenant is cautioned that rent must be paid when it is due as stated in Section 20(1) of the *Manufactured Home Park Tenancy Act*. There is no provision under the *Act* to withhold rent due to a Dispute Resolution Proceeding and a 10 Day Notice to End Tenancy for Unpaid Rent may be issued if rent is not paid in full when it is due.

#### Conclusion

The Tenant's application to cancel the One Month Notice is successful. **The One Month Notice dated May 17, 2018 is cancelled and of no force or effect.** This tenancy continues until 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: July 20, 2018

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Residential Tenancy Branch