



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

<u>Dispute Codes</u>	Landlord:	OPM OPC FF
	Tenant:	CNC LRE

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Manufactured Home Park Tenancy Act* (the “Act”).

The Landlord’s Application for Dispute Resolution was made on September 10, 2018 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession; and
- an order granting recovery of the filing fee.

The Tenant’s Application for Dispute Resolution was made on August 16, 2018 (the “Tenant’s Application”). The Tenant applied for the following relief, pursuant to the *Act*:

- an order cancelling a cancelling a One Month Notice to End Tenancy for Cause, dated August 1, 2018 (the “One Month Notice”); and
- an order suspending or setting conditions on the Landlord’s right to enter the rental unit or site.

The Landlord attended the hearing on his own behalf and was accompanied by R.S., who did not participate in the hearing. The Tenant attended the hearing on her own behalf and was accompanied by J.G., who did not participate in the hearing. Both the Landlord and the Tenant provided affirmed testimony.

The parties acknowledged receipt of the Application packages and documentary evidence to be relied upon. The parties were in attendance and were prepared to proceed. I find the parties were sufficiently served with the above documents for the purposes of the *Act*, pursuant to section 64 of the *Act*.

The parties were provided with the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?
3. Is the Tenant entitled to an order cancelling a One Month Notice?
4. Is the Tenant entitled to an order suspending or setting conditions on the Landlord's right to enter the rental unit or site?

### Background and Evidence

The agreement between the parties was not reduced to writing. However, the parties agreed the Tenant rents a space on the Landlord's property where she parks her recreational vehicle. The Tenant moved onto the site on October 1, 2017. Rent in the amount of \$500.00 per month is due on the first day of each month. The Tenant did not pay a security deposit. Since moving onto the property, the Tenant has added skirting around her recreational vehicle, with the Landlord's assistance.

### The Landlord's Claim

The Landlord wishes to end what he described as a month-to-month the tenancy. Accordingly, he issued the One Month Notice on the basis that the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after being asked to do so. The One Month Notice also indicated it was issued on the basis the Tenant has not complied with an order under the legislation. However, the Landlord confirmed during the hearing that this was in error.

The Landlord testified the breach of a material term involves debris and belongings around the Tenant's site. He also described the Tenant's continuous "barrage" of complaints about other occupants. The Landlord also stated that his wife is afraid of the Tenant following an incident when the Tenant went to the Landlord's site. In addition, the Landlord testified the Tenant keeps a trailer on the property.

In reply, the Tenant acknowledged some of her belongings are around the recreational vehicle and that she has been working on cleaning them up. The Tenant also acknowledged that some of her belongings may encroach on an adjacent but unoccupied site, and would be easy to remove.

The Tenant also acknowledged she has complained about noise made by another tenant, and suggested the One Month Notice was issued in retaliation.

With respect to the concerns expressed by the Landlord about his wife's feeling of safety, the Tenant testified she attended the Landlord's site to serve documents related to the current dispute.

### The Tenant's Claim

The Tenant sought an order cancelling the One Month Notice. The Tenant's response to the Landlord's evidence with respect to the One Month Notice is summarized above.

In addition, the Tenant sought an order suspending or setting conditions on the Landlord's right to enter the rental unit or site. However, no submissions were made by the Tenant with respect to this aspect of her claim.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Policy Guideline #9 provides assistance when determining the status of an agreement. It confirms as follows:

*If there is exclusive possession for a term and rent is paid, there is a presumption that a tenancy has been created, unless there are circumstances that suggest otherwise.*

[Reproduced as written.]

In these circumstances, I find that the Tenant has occupied the site, on a month-to-month basis, since October 1, 2017. No issues were raised during the hearing about the payment of rent when due. Despite the Landlord's submissions about zoning of the property, I find that circumstances do not suggest the agreement is not a tenancy. Accordingly, I find that a tenancy has been created and that the *Act* applies.

Section 40 of the *Act* sets out the bases for ending a tenancy for cause. In this case, the Landlord testified the One Month Notice was issued on the basis that the Tenant breached a material term of the tenancy agreement.

Policy Guideline #8 provides assistance when determining whether or not a term in a tenancy agreement is a material term. It states:

*A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.*

*To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.*

*The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.*

*To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:*

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

*Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.*

[Reproduced as written.]

After considering the above, I find there was no written tenancy agreement between the parties to assist in determining whether or not the behaviours alleged by the Landlord, if true, amounted to breaches of material terms of the agreement between the parties. In any event, even if there

was a breach of a material term, I find there is insufficient evidence before me to conclude the Tenant was provided with written notice of an alleged breach and was given a reasonable amount of time to fix the breach. Accordingly, I find the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

### Conclusion

The Landlord's Application is dismissed, without leave to reapply.

The One Month Notice is cancelled. The tenancy will continue until otherwise 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: October 19, 2018

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Residential Tenancy Branch