



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC MT OLC FFT

### Introduction

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

- cancellation of the landlord's Notice to End Tenancy for Cause (One Month Notice), pursuant to section 40 of the *Act*;
- more time to cancel a notice pursuant to section 59 of the *Act*;
- an Order for the landlord to comply with the *Act*, regulations, and/or the tenancy agreement pursuant to section 55 of the *Act*; and
- recovery of the filing fee for this application from the landlord pursuant to section 65 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenants' Application for Dispute Resolution and evidence served by Canada Post registered mail. Based on the undisputed testimonies of the parties, I find that the landlords were served with the notice of this hearing in accordance with section 81 of the *Act*.

The tenants testified that they only picked up the landlords' evidence from the Canada Post office the day prior to the hearing. The landlords testified that they sent their evidence to the tenants on October 15, 2018 by Canada Post registered mail and provided the registered mail tracking number as proof of service. I accessed the Canada Post website and confirmed that the landlord's evidence package was mailed on October 15, 2018.

Section 83 of the *Act* sets out when documents that are not personally served are considered to have been received. Unless there is evidence to the contrary, a document is considered or 'deemed' received on the fifth day after mailing when it is served by mail (ordinary or registered mail).

Residential Policy Guideline 12. Service Provisions provides guidance on determining deemed receipt for service of documents by registered mail, as follows:

*Where a document is served by Registered Mail, the refusal of the party to accept or pick up the Registered Mail, does not override the deeming provision. Where the Registered Mail is refused or deliberately not picked up, receipt continues to be deemed to have occurred on the fifth day after mailing.*

As such, I find that the tenants were served with the landlords' evidence in accordance with section 81 of the *Act* and deemed to have received the evidence package on October 20, 2018, the fifth day after mailing, in accordance with section 83 of the *Act*. Therefore I have considered the landlords evidence in making a decision in this matter.

#### Preliminary Issue – Redundant and Unnecessary Claims

The tenants confirmed that they applied for an Order for the Landlord to Comply in relation to their claim seeking to cancel the One Month Notice, and that this was not a separate claim for a separate issue. As this is a redundant claim, I dismiss this claim without leave to reapply.

The tenants were sent the landlords' One Month Notice by Canada Post registered mail on September 1, 2018. In accordance with section 83 of the *Act* the tenants are deemed to have received the landlords' One Month Notice on September 6, 2018. The tenants had 10 days, until September 16, 2018, to dispute the notice. As that day is a Sunday, the tenants had until the next business day, September 17, 2018, to file their application for dispute, which the tenants did. Therefore, I find that the tenants application for more time to cancel the One Month Notice is an unnecessary claim as the tenants filed their application within the 10-day time limit in accordance with the *Act*. As such, I dismiss this claim without leave to reapply.

#### Procedural Matters

I explained to the parties that section 48 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is

on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

Issue(s) to be Decided

Should the One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the One Month Notice?

Are the tenant entitled to recover the cost of the filing fee from the landlord?

Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

The parties confirmed that there is no written tenancy agreement, only a verbal agreement between the parties. The parties confirmed that this month-to-month tenancy began August 2007 and that monthly rent of \$150.00 is payable on the first of the month.

A copy of the One Month Notice dated September 1, 2018 was submitted into evidence, which states an effective move-out date of October 6, 2018, with the following boxes checked off as the reasons for seeking an end to this tenancy:

*Tenant has allowed an unreasonable number of occupants in the unit/site.*

*Tenant has not done required repairs of damage to the unit/site.*

I note that the landlords have provided the following details regarding these reasons to end tenancy in the "Details of Cause" section provided on the form:

*Failed to remove veicals that cannot move by their own power it is against the law of PRRD. Failed to remove secound house trailor It also is against the law of PRRD.*

(Transcribed as written)

The landlords attached a sheet to the One Month Notice with additional details as follows:

- 1) *Failed to let the landlord inspect the property after a number of complaints from neighbors.*
- 2) *Fail to communicate with land lord about cleaning up the place after 2 written warnings.*
- 3) *Hanging up the phone when the land lord wants to discuss things that need to be done.*
- 4) *Bringing stolen property on the the place.*

(Transcribed as written)

The landlords testified that the site consists of approximately four acres. The landlords submitted photographic evidence of the site taken from April 2017 and an email from the regional bylaw enforcement officer, also dated April 2017, cautioning the landlords regarding contraventions on the site due to derelict vehicles, appliances, mattresses, and too many dwellings on the site.

The landlords testified that they have provided the tenants with repeated warnings to clean up the site and to properly fence the lagoon on the site.

The landlords testified that there could be damage to the site in relation to soil contamination, however, the landlords have not had the soil tested at this point.

The landlords were unsure how many occupants resided in the site. The tenants testified that the two tenants as well as two other occupants, resided in the site.

The tenants testified that they have made progress in removing the derelict vehicles and tearing down the storage dwellings, however they stated they would need more time to be able to clean up the site to the standard of the landlords.

The landlords acknowledged some progress had been made but that there was still more work to be done.

### 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.

As explained in the Preliminary Issues section of this decision, I have deemed that the tenants received the One Month Notice on September 6, 2018, and filed an application to dispute the One Month Notice on September 17, 2016, which is the first business day

after the 10-day time limit provided to dispute the notice. As such, I find that the tenants have met the 10-day time limit to apply for dispute provided by section 40(4) of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice and that the notice is on the approved form and compliant with section 45 of the *Act*.

After reviewing the One Month Notice submitted into evidence, I find that the notice meets the requirements for form and content as set out in section 45 of the *Act* as it is signed and dated by the landlord, provides the address of the rental unit, states the effective date of the notice, sets out the grounds for the tenancy to end, and is in the approved form.

I note that the landlord has entered an incorrect effective vacancy date on the notice. Pursuant to section 46 of the *Act*, as I have found that the tenant was served with the One Month Notice on September 6, 2018, the effective date of the notice automatically corrects to the earliest effective date allowed by the *Act*, which in this case is October 31, 2018.

Under section 26(3) of the *Act*, a tenant must repair damage to the manufactured home site or common areas that is caused by the actions or neglect of the tenant or a person permitted in the manufactured home park by the tenant. Under section 40(1)(f), a landlord can provide a notice to terminate a tenancy if the tenant does not repair damage to the site within a reasonable time.

In this case, the landlords have not submitted any recent photographic evidence to substantiate their claim that the site still requires extensive repair. The tenants testified that they have made substantial progress to clean up the site, and submitted documentary evidence in support of this claim.

Regarding damage to the site, the landlords did not have any evidence of soil contamination as no testing had been done.

Regarding an unreasonable number of occupants, the landlords did not have evidence of the number of occupants. The tenants acknowledged four persons living on the site, which is not an unreasonable number of occupants given the site is four acres and is permitted for two single family dwellings, according to the April 2017 email from the bylaw enforcement officer submitted into evidence by the landlords.

Therefore, based on the testimony and evidence presented by the parties, on a balance of probabilities, I find that the landlords did not present sufficient evidence that damage to the site has occurred as a result of soil contamination, that the derelict vehicles, dwellings and garbage on the site noted in April 2017 persists, and that there are an unreasonable number of occupants in the site.

As such, I find that the landlords have failed to satisfy the burden of proving the grounds for ending the tenancy for cause. The tenants' application is successful and the landlords' One Month Notice is cancelled and of no force or effect.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

As the tenants were successful in their application, they may, pursuant to section 65 of the *Act*, recover the \$100.00 filing fee from the landlords. In place of a monetary award, **I order that the tenants withhold \$100.00 from a future rent payment on one occasion.**

#### Conclusion

The tenants were successful in their application to dispute the landlords' One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated September 1, 2018 is cancelled and of no force or effect, and this tenancy shall continue until it is ended in accordance with the *Act*.

**I order the tenants to withhold \$100.00 from a future rent payment on one occasion** in satisfaction of the recovery of the filing fee for this application.

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: November 01, 2018

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Residential Tenancy Branch