



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC, FFT

### Introduction

This hearing was scheduled in response to the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") dated November 29, 2018 pursuant to section 47;
- cancellation of the landlord's 1 Month Notice dated November 8, 2018 pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and the landlord's agent (the "landlord") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. As neither party raised any issues regarding service of the application or the evidence, I find that both parties were duly served with these documents in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the landlord's 1 Month Notices be cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

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

### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on August 1, 2018 on a fixed term until January 31, 2019. Rent in the amount of \$1,250.00 is payable on the first of each month. The tenant remitted a security and pet deposit in the total amount of \$1,250.00 at the start of the tenancy, which the landlord still retains in trust. The unit is a single family house that can only be accessed through a manufactured home park, also owned by the landlord. The tenant continues to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's first 1 Month Notice dated November 29, 2018 and second 1 Month Notice dated November 8, 2018. The grounds to end the tenancy cited in both 1 Month Notices were;

- the tenant has allowed an unreasonable number of occupants in the unit/site
- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- tenant has assigned or sublet the rental unit/site without landlord's written consent

The landlord testified that the second 1 Month Notice was only issued because he had inadvertently reversed the effective date with the signature date on the first 1 Month Notice. The landlord testified that both notices were issued in response to the tenant's breach of material terms of the tenancy agreement and park rules, which apply to this tenancy as outlined in the signed tenancy agreement.

On September 14, 2018 the landlord informed the tenant in writing of the breaches. In the letter the landlord warned the tenant that subletting and disturbances of any sort, including trespassing through neighbouring pad sites must cease no later than September 30, 2018 and failure to do so will result in "other steps." The landlord testified that despite the written warning letter and other verbal warnings, the tenant has not stopped the traffic to her door at all hours of the night and day, trespassing through the neighbouring pad sites or creating noise, which has disturbed her neighbours in the park. As a result, the landlord issued the 1 Month Notices. In support of his position, the landlord has provided a copy of the tenancy agreement, park rules, breach letter, emails, witness statements and a detailed log from the manager.

The tenant acknowledged receipt of the breach letter. The tenant disputed subletting the rental unit. She testified that she works a variety of hours, often times having to leave in the middle of the night in a borrowed car which she admitted could create the impression the unit was being sublet. The tenant testified that she was unaware that she and her guests were trespassing through pad sites until a “no trespassing” sign was posted. The tenant testified that she has never hosted a loud party in the unit or played loud music that would disturb her neighbours.

### Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. The onus is on the landlord to prove the significant interference or unreasonable disturbance took place by the tenant or person permitted on the property by the tenant. The landlord provided evidence in the form of testimony and written witness statements regarding the ongoing disturbance created by the tenant and the tenant’s guests.

The landlord’s testimony was congruent with the submitted witness statements that the tenant’s guests enter and exit all hours of the night resulting in noises that disturb the occupants of the park. I find the submitted witness statements substantiate the landlord’s testimony that the tenant and her guests trespass through neighbouring pad sites which disturb these occupants. Based on the landlord’s testimony and submitted witness statements I find it probable that the tenant’s guests have unreasonably disturbed other occupants of the park. Therefore, I find the landlord has met the onus and dismiss the tenant’s application to cancel the 1 Month Notice.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord’s notice to end tenancy, an order of possession must be granted to the landlord if, the notice to end tenancy complies in form and content and the tenant’s application is dismissed or the landlord’s notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

I have reviewed the 1 Month Notice and I find it complies with section 52 of the *Act*. I accept the landlord’s explanation that the notice was given the wrong date by error, and that it should have been dated for October 29, 2018. I find that there was no prejudice to the tenant with this incorrect date, as the tenant received the notice and disputed it in

her application. I also find that the incorrect date does not nullify the notice, as section 52 of the *Act* states simply that the notice must be “dated.” Pursuant to section 53 of the *Act*, the effective date of the 1 Month Notice is automatically corrected to November 30, 2018. As the tenant’s application has been dismissed and the effective date of the 1 Month Notice has passed, I find that the landlord is entitled to a two (2) Day order of possession, pursuant to section 55 of the *Act*.

As a finding has been made in relation to the 1 Month Notice incorrectly dated November 29, 2018, and the tenancy is set to end, a finding on the 1 Month Notice dated November 8, 2018 is not required. This portion of the tenant’s claim is dismissed without leave to reapply. The tenant did not provide testimony or evidence in relation to the other remedy she sought in her application therefore this portion of her claim is dismissed without leave to reapply. As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for the application.

### Conclusion

The tenant’s entire application is dismissed.

An order of possession is granted to the landlord effective **two (2) days after service on the tenant**.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 11, 2018

---

Residential Tenancy Branch