



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, AS

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy dated May 7, 2019
- b. An order to allow the assignment or sublet and as the landlord's permission has been unreasonably withheld.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the one month Notice to End Tenancy was personally served on the Tenant on May 7, 2019.

The Tenant filed an Application for Dispute Resolution/Notice of Hearing on May 23, 2019. I find that she personally served the Application for Dispute Resolution/Notice of Hearing on the landlord on June 13, 2019. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided:**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy dated May 7, 2019?
- b. Whether the tenant is entitled to an order permitting the assignment or sublet of the manufactured home?

### **Background and Evidence:**

The landlord and SS entered into a tenancy agreement that provided that the tenancy would start on October 1, 2014 and continue on a month to month basis. The present rent is approximately \$405 per month payable in advance on the first day of each month. SS is the sister of the Applicant.

The applicant testified she is the owner of the manufactured home. She purchased it in 2014. She was not able to register the transfer as she needed further documentation from the seller. The seller left town shortly after the sale and she has not been able to locate him.

The Applicant does not live in this manufactured home park. She initially rented it to her brother but there were problems with him paying rent to her. He eventually left. She rented it to B but B failed to pay the rent and was evicted. B returned to the manufactured home without her consent. It was intended that her son could move into this manufactured home once he becomes of age. He will become of age this December.

Grounds for Termination:

The Notice to End Tenancy identifies the following grounds:

- Tenant is repeatedly late paying rent
- Tenant has not done required repairs of damage to the unit/site
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so
- Tenant's rental unit/site is part of an employment arrangement that has ended and the unit/site is needed for a new employee

The landlord gave the following evidence including supporting documentation and photos:

- The tenant has paid the rent late on many occasions in the last year including the following:
  - The rent for May 2019 was paid on May 3, 2019
  - The rent for April 2019 was paid on April 4, 2019
  - The rent for February 2019 was paid on February 15, 2019
  - The rent for January 2019 was paid on January 4, 2019.
  - The rent for December 2018 was paid on December 17, 2018

- The rent for October 2018 was paid on October 2, 2018
  - The rent for September 2018 was paid on September 18, 2018
  - The rent for August 2018 was paid on August 8, 2018.
  - The rent for July 2018 was paid on July 4, 2018.
  - The rent for May 2018 was paid on May 4, 2018
  - There are many previous late payments.
- The Applicant has failed to maintain the rental property despite several notices to do so. The landlord produced a number of photos showing the poor condition of the manufactured home.
- There are presently two unlicensed vehicles in the yard contrary to the Park Rules and tenancy agreement.
- The site is overrun by weeds including the growth of marijuana.
- The park is a family park and he is concerned about the safety of other residents. The tenant presently in the manufactured home has a pit bull which is often off lease.
- The Applicant never asked the landlord for permission to sublet the property. Given the problems the landlord has experienced with the person presently living in the manufactured home the landlord would not approve any sublet or assignment.
- The landlord has received a number of complaints from other residents about the conduct of the tenant presently living in the manufactured home.
- The Applicant has failed to register ownership of the property at the registry confirming she owns the manufactured home contrary to the Park Rules and tenancy agreement..

The tenant gave the following evidence:

- She has never lived in this manufactured home or lived in this park. The manufactured home was purchased with the intention of allowing her son to move into it when he becomes of age. Her son will become of age this coming December.
- She initially rented the manufactured home to her brother who lived in it for several years. She eventually had to evict him because he failed to pay the rent and failed to properly maintain the home.
- She acknowledged that she has not checked on the manufactured home on a regular basis.
- She was not aware of the problems that her present tenant B was having with the park and other residents.
- She evicted B a few months ago as she was not paying the rent. However, B moved back in without her consent.

- She and her sons have made efforts to clean the yard and maintain the property. They plan to fix the roof this summer.
- There are a number of other manufactured homes in the park that are poorly maintained. She produced a number of photos of those homes.
- She acknowledged paying the rent late on many occasions. However, the rent is usually always paid by the 5<sup>th</sup> day of the month. She acknowledges she personally pays the rent to the landlord. This is usually done in person and by cash.
- She attempted to register the bill of sale transferring ownership to her. However the Registry required additional documentation from the seller. By that time the seller had left town and she is unable to locate him.
- The yard is in fairly good condition now although it needs to be mowed.
- She was unaware the B had two unlicensed vehicles.

#### Analysis:

The Act provides that the tenant must file an Application for Dispute Resolution within 10 days of receiving the Notice to End Tenancy failing which she is conclusively deemed to have accepted the end of the tenancy and must vacate the property. However, the Act permits an arbitrator to grant an extension of time in exceptional circumstances. The tenant testified she was delayed because she was hit by a car while riding her bicycle. I determined this amounted to an exceptional circumstance and I granted her an extension of time to file the Application for Dispute Resolution.

The tenant filed the Application for Dispute Resolution on May 23, 2019. The Act provides she must serve it on the Respondent within 3 days. She delayed serving it until June 13, 2019. She failed to provide as satisfactory reason for the delay. Section 52 of the Manufactured Home Park Tenancy Act provides as follows:

#### Starting proceedings

52 (3) A person who makes an application for dispute resolution must give a copy of the application to the other party within 3 days of making the application, or within a different period specified by the director.

The tenant failed to comply with the time requirements. She failed to provide an satisfactory reason for not complying with the Act. Section 59(1) provides as follows:

“Director's orders: changing time limits

59 (1) The director may extend a time limit established by this Act only in exceptional circumstances, other than as provided by section 52 (3) [starting proceedings] or 74 (4) [decision on application for review].”

The Act does not permit an arbitrator to extend the time limit for serving a Respondent within 3 days even if the Tenant could have established exceptional circumstances. I determined that on that basis the application should be dismissed without leave to re-apply.

I determined that it was appropriate to consider the tenant’s application to cancel the one month Notice to End Tenancy for repeated late payment of rent on the merits.

Policy Guideline #38 provides as follows:

“The *Residential Tenancy Act*<sup>1</sup> and the *Manufactured Home Park Tenancy Act*<sup>2</sup> both provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.

Three late payments are the minimum number sufficient to justify a notice under these provisions.

It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late

A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.

In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.

Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.”

The Policy Guidelines provide that a minimum of 3 late payments are grounds to end the tenancy. I accept the evidence provided by the landlord which is set out above that

the tenant has been late paying the rent on 9 occasions in the last year. I determined the landlord has established sufficient cause to end the tenancy on the basis of repeated late payment of rent and there is no basis for cancelling the Notice to End Tenancy based on this ground.

As I have determined the tenant's application to cancel the one month Notice to End Tenancy should be dismissed on the basis of repeated late payment of rent I determined it was not necessary to consider the other grounds.

I determined the landlord has not unreasonably refused to consent to the sublet of the manufactured home on this site. I dismissed the tenant's application for an order to that the landlord permit the assignment or sublet. This issue is also moot as the tenancy is coming to an end.

Determination and Orders:

I determined that the landlord has established sufficient cause to end the tenancy. As a result I dismissed the tenant's application to cancel the one month Notice to End Tenancy dated May 7, 2019. I order that the tenancy shall end. The rent has been paid for July. The landlord has not agreed to reinstate the tenancy. However, I ordered that the tenancy shall end on July 31, 2019.

Order for Possession:

The Residential Tenancy Act provides that where an arbitrator has dismissed a tenant's application to cancel a Notice to End Tenancy, the arbitrator must grant an Order for Possession. As a result I granted the landlord an Order for Possession. I set the effective date of the Order of Possession for July 31, 2019.

The tenant must be served with this Order as soon as possible. Should the tenant fail to comply with this Order, the landlord may register the Order with the Supreme Court of British Columbia for enforcement.

**This decision is final and binding on the parties.**

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: July 09, 2019

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Residential Tenancy Branch