



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MT, FFT

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Manufactured Home Park Tenancy Act (the "Act"). The tenant applied for an order cancelling a One Month Notice to End Tenancy for Cause (the "Notice"), for more time to file an application to dispute the Notice, and for recovery of the filing fee paid for this application.

The tenant's agent, who is the tenant's mother and hereafter, "agent", and the landlords attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary and digital evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

### Preliminary and Procedural Matters

After introductory matters were discussed, the tenant's request for more time to file an application in dispute of the landlords' Notice was considered to determine whether a hearing on the merits of the landlords' Notice was needed.

The undisputed evidence of the landlords is that they served the tenant with the Notice by placing the document inside an addressed envelope and placing it in the tenant's mailbox, on May 6, 2019.

Under section 90 of the Act, a document served in this manner is deemed received three days later. In this case, as the Notice was placed inside the mailbox on May 6, 2019, it was deemed received on May 9, 2019, unless there is evidence to the contrary.

Under the Act, the tenant had 10 days to file his application to dispute the Notice. In this case, the Residential Tenancy Branch ("RTB") records show that the tenant filed his application on May 27, 2019.

The agent stated that the tenant works two weeks on and two weeks off, and did not return home and collect the landlords' Notice until May 17, 2019. I accepted this undisputed evidence and determined that the tenant's application in dispute of the Notice was filed by the 10<sup>th</sup> day of having received it.

I informed the parties that the hearing would proceed on the merits of the Notice.

### Issue(s) to be Decided

- Should the Notice be cancelled?
- Is the tenant entitled to recover the cost of the filing fee?

### Background and Evidence

The undisputed evidence is that the landlords had lived in the manufactured home park for approximately three years prior to purchasing the property, effective April 17, 2019.

A copy of the One Month Notice to End Tenancy for Cause with attached timeline was submitted in evidence.

This Notice declares that the tenancy is ending because the tenant has allowed an unreasonable number of occupants in the site and the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In support of their Notice, the landlord submitted that on or about April 20 and 21, 2019, extra activity was noticed around the tenant's manufactured home site, that being two dogs and extra vehicles.

The landlord stated that the previous owner of the manufactured home park, "S", who sold them the property said that the verbal park rules in place prohibited dogs from living in the park. Therefore, the tenant was in violation of the "no dog" park rules, according to the landlords.

The landlord submitted that they told the tenant he would have to remove the dogs, but that he has refused. The landlord stated that the dogs in the tenant's manufactured home site came in after the landlords purchased the property.

The landlord stated that they presented the tenant with new written park rules, but that he refused to sign the document. The landlord submitted copies of the new park rules and the amended new park rules, neither of which the tenant would sign.

The landlords confirmed that the underlying and only issue with regard to this dispute is the matter of the dogs. The landlords confirmed that if the dogs were removed, there would be no issue with this tenancy or this tenant.

In response to my inquiry, the landlords confirmed that there was not a written tenancy agreement with this tenant or written park rules prior to their purchase.

*Tenant's agent's response-*

The agent said that she bought the manufactured home in question in 2014 and lived there until April 2018, when she sold the home to the tenant, who had lived there since 2015.

The agent said that when she bought the home, there were two blue heeler dogs living in the home and in addition, other dogs were living in the park. The agent said that there were always dogs coming and going in the park during her time of residing there.

The agent said that the tenant's sister came to live with the tenant for three weeks in the fall of 2018, and has lived with the tenant for 10 weeks in 2019, beginning in January while finishing her practicum. The dogs belong to the tenant's sister and have lived in the manufactured home since the fall of 2018.

The agent said there were no park rules or a written tenancy agreement when she moved into her home in 2014. Further, the agent said that there has never been a single document or conversation about dogs in the park.

### Analysis

As I have determined that the tenant filed his application in dispute of the landlords' Notice within the 10 days allowed under the Act, the landlords had the burden to prove that the tenancy should end for the reasons indicated on the Notice. In this case, the causes listed were that the tenant has allowed an unreasonable number of occupants in the site and the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Despite these listed causes, the landlords confirmed that the only issue was that the tenant had dogs in his manufactured home.

I have therefore determined that the landlords failed to submitted sufficient evidence that the tenant had an unreasonable number of occupants in the manufactured home and manufactured home site and did not consider that issue for this Decision.

As to the breach of a material term, a material term is a term that is of such importance that the most trivial breach of the term gives the other party the right to end the tenancy.

In this case, the undisputed evidence is that there is no written tenancy agreement presently and that there has never been a written tenancy agreement regarding this tenant and the manufactured home site.

Section 13 of the Act requires a landlord to prepare a written tenancy agreement. This section requires that the written tenancy agreement set out, among many other things, the park rules, if there are any.

While I do not find that the present landlords violated this section of the Act, due to their recent purchase of the park, the evidence is that the previous owner/landlord failed to comply with this section of the Act.

The purpose of a written tenancy agreement is to communicate to the parties the terms and conditions of the tenancy, which are then enforceable.

Under section 30 of the Residential Tenancy Regulations ("Regulations"), the landlord may establish, change or repeal a rule if it is reasonable in the circumstances and for the effects listed. The Regulations do not require the tenants to sign the rules.

Section 30 (3)(d) of the Regulations allows a rule only if the rule does not change a material term of the tenancy agreement. In this case, as there was not a written tenancy agreement, I am unable to conclude that any terms dealing with pets were material terms of the tenancy agreement.

I therefore find that the landlords do not have the right to end this tenancy, pursuant to section 40(g) of the Act.

In addition, Section 30 of the Regulations states that a rule that prohibits a pet does not apply to a pet living with a tenant or resident at the time the rule is passed and which continues to live there after the rule is passed.

In the case before me, on the basis of the agent's clear and consistent testimony, I find on a balance of probabilities that the dogs in the tenant's manufactured home were living in the manufactured home before the attempted establishment of the park rules.

On this basis, I find the landlords may not prohibit the tenant's or the residents' current pets with a park rule.

As a result of my above findings, I find the landlords' One Month Notice to End Tenancy for Cause dated May 6, 2019, is not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, and the tenancy will continue until ended in accordance with the Act.

I allow the tenant recovery of his filing fee of \$100.00, and direct that he deduct this amount from his next or a future month's rent payment in satisfaction of his monetary award. The tenant should inform the landlords when he is making this deduction.

### Conclusion

I grant the tenant's application seeking cancellation of the landlord's Notice and the Notice is cancelled with the effect that the tenancy will continue until ended in accordance with the Act.

The tenant is directed to deduct \$100.00 from a future month's rent payment in satisfaction of his monetary award for recovery of the filing fee.

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 10, 2019

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Residential Tenancy Branch