



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing convened as a result of a Tenant's Application for Dispute Resolution filed on April 27, 2019 wherein the Tenants sought to cancel a 1 Month Notice to End Tenancy for Cause issued on April 10, 2019 (the "Notice") and to recover the filing fee.

The hearing was scheduled for teleconference at 9:30 a.m. on July 11, 2019.

Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me. The Tenant was also assisted by her daughter, J.S., who is also an occupant of the manufactured home. The Tenant's grandson, M.S., another occupant of the manufactured home, also appeared as a witness on behalf of the Tenant. The corporate Landlord was represented by legal counsel, N.V. The Landlord's Administrative Manager, J.P., testified on behalf of the Landlord, as did the Landlord's Manager, N.R., and a neighbour, C.S.

### *Preliminary Matter—Tenants' Evidence*

On the date of the second hearing the Landlord's counsel confirmed that they did not receive evidence submitted by the Tenants on May 4, 2019 which contained photos showing the current and previous fence separating the manufactured home site and the neighbouring site. J.S. stated that she provided them to the Tenant's lawyer, but was not aware if they had been provided to the Landlord's lawyer. I find that this evidence was not provided to the Landlord and as such I decline to consider the evidence and photos submitted by the Tenants on May 4, 2019.

No other issues with respect to service or delivery of documents or evidence were raised by the parties.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary Matter—Parties Names

The Tenant named an individual, N.E., as the Landlord. Counsel for the Landlord advised that N.E. is one of the co-owners of the limited company which in turn is the owner of the property upon which the manufactured home park is located. The limited company is named as Landlord on the original tenancy agreement and is therefore the proper party to this proceeding. Pursuant to section 64(3)(c) of the *Residential Tenancy Act* I amend the Tenants' application to correctly name the corporate Landlord.

The Tenant also included her daughter, J.S., and her grandson, M.S. as Tenants on the Application for Dispute Resolution. Documentary evidence submitted by the Landlord confirms that the original tenancy agreement was between the Landlord and the prior owners: M.B. and R.B. M.B. and R.B.'s tenancy was assigned to the Tenant at the same time that they sold the manufactured home to the Tenant (March 2008). As such, the Tenant is the owner of the manufactured home and has all the rights and responsibilities as a tenant pursuant to the tenancy agreement.

Conversely, the Tenant's daughter, J.S. and her grandson, M.S. are occupants, not tenants pursuant to the tenancy agreement. Accordingly I amend the Tenant's Application for Dispute Resolution to correctly note the Tenant as the sole tenant to the tenancy agreement.

#### Issues to be Decided

1. Should the Notice be cancelled?
2. Are the Tenants entitled to recover the filing fee?

## Background and Evidence

Hearings before the Residential Tenancy Branch are governed by the *Residential Tenancy Branch Rules of Procedure*. Rule 6.6 provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution and is the Applicant, the Landlord's representatives presented their evidence first.

The Landlord's Administration Manager, J.P. testified as follows. She confirmed that on March 27, 2008 the tenancy was assigned to the Tenant when she purchased the manufactured home from the original tenants.

J.P. testified that the commissionaire served the Notice in person on the Tenant. Attached to the Notice was a three page schedule setting out the circumstances giving rise to the Notice which included the following allegations:

- that since December 2016 the Tenant's grandson, M.S., has unreasonably disturbed other tenants of the manufactured home park and infringed on their right to quiet enjoyment;
- that the neighbour, C.S., has made numerous complaints about M.S. since 2016; such complaints include the following:
  - that M.S. verbally abuses and threatens C.S.;
  - that M.S. has erected inappropriate signage on the Tenant's manufactured home site designed to harass C.S.;
  - that M.S. has intentionally damaged C.S.' personal property, through kicking sporting equipment against C.S.'s fence and cutting down temporary fencing materials; and,
  - that M.S. has defaced C.S.'s property by spreading refuse and compost materials.
- that the Landlord has received complaints from other neighbours about the lack of upkeep of the Tenant's manufactured home site; and,
- that the Landlord has sent 13 warning letters to the Tenant about her grandson's behaviour from December 2016 to February 25, 2019.

J.P. confirmed that the Tenant has not personally done anything to negatively affect her tenancy as the circumstances giving rise to the Notice relate to the actions of the Tenant's daughter, J.S. and her grandson, M.S.

J.P. stated that they are not able to provide C.S. with quiet enjoyment of his manufactured home site, due to the actions of the Tenant's daughter and grandson. She described the relationship between M.S. and the neighbour, C.S. as acrimonious, spanning many years, and getting worse. Although the allegations are clearly set forth in the documentary evidence submitted by the Landlord, J.P., summarized that the issues relate to M.S. screaming and swearing at C.S.; M.S. kicking his soccer ball over the fence, M.S. knocking C.S.'s compost over daily and M.S. calling C.S. a "Nazi".

J.P. confirmed that 13 warning letters have been sent to the Tenant between December 28, 2016 and February 25, 2019 regarding her grandson's behaviour. Those letters, as well as the Tenant's response, and responses from her grandson and daughter, were provided in evidence before me. While I find it not necessary that I address each letter and the responses in detail, I note the following.

In one such letter, dated June 29, 2017, the Tenant was advised that her grandson had threatened C.S. and that C.S. feared for his safety. In this letter the Tenant was further advised that her tenancy was in jeopardy due to her grandson's behaviour towards C.S. The documentary evidence further indicates that following receipt of this letter, the Landlord was informed that M.S. put a sign in his window facing the neighbour's yard upon which he wrote "Nazi's suck".

This pattern is repeated in 2018 as the Landlord issued another warning letter to the Tenant in June of 2018 informing the Tenant of her grandson's inappropriate behaviour as well as the risk posed to her tenancy. In September 2018, a further warning letter was issued. Following receipt of these letters, the Tenant's grandson wrote an email to the Landlord as follows:

"That bully is harassing us by complaining about complete nonsense and he built a plant barrier on the fence to block out our light. Why don't you say something about that you big bully. I can kick my balls in the yard if I please you gestapo guy! Call the cops if you think that stopping a kid from playing in his yard is part of your mandate."

The correspondence between the Landlord and the Tenant's grandson continued and on October 6, 2018 the Tenant's grandson wrote to the Landlord, as well as others the following:

"F\*%k off ya wacko woozies!"

J.P. stated that since issuing the Notice, M.S.'s behaviour has worsened. She stated that recently M.S. slammed his hockey stick in C.S.'s direction and against the fence in a threatening manner.

In November of 2018, the Tenant's daughter, J.S., acknowledged her son's behaviour and wrote in an email to the Landlord as follows:

"I'm sorry to hear that this has occurred. I have mentioned it to [M.] and my hope is that he will stop bothering [C.S.]. My mother is very concerned. She has just recently been out of the hospital and is trying to recover her health. We want to be able to live peaceably as well. She is much too old to be having this stress. Hopefully [M.] has gotten the message and will stop bothering the neighbour. It's really between the two of them, this dispute. [M.] did try to rectify this dispute and [C.S.] told him to get off his property or he would call the police. This dispute works both ways."

On December 27, 2018 the Landlord requested a conference with the Tenant and J.S. to discuss the issues. On February 21, 2019 another warning letter was sent. In this letter the Landlord suggested that M.S. move from the park as it was his behaviour which was jeopardizing his grandmother's tenancy.

Counsel for the Landlord advised that the Tenant's grandson, M.S. is 40 years old. They are informed he has a disability although the nature of that disability was unclear.

J.P. testified that there have been other residents in the park who have expressed concerns about M.S.' behaviour, including being disruptive and not maintaining the yard. She did not provide significant details regarding these other concerns.

J.P. also stated that it is not just M.S. who is disturbing the neighbour, but also J.S. She stated that when M.S. was away for a couple of months on a holiday, J.S. admitted to knocking over C.S.'s compost.

The neighbour, C.S. provided a written statement in evidence. He also testified and confirmed the contents of his written statement.

C.S. stated that he has lived at the manufactured home park for five years. He writes that the issues with the Tenant's grandson M.S. started in February of 2015. At that time, M.S. would ride his bike on C.S.' lawn to access his grandmother's back yard and in doing so destroyed the lawn. When he erected a temporary fence, M.S. repeatedly

pulled it down. C.S. then received permission from the Landlord to erect a permanent fence. He writes that after the permanent fence was erected the grandson's behaviour escalated.

C.S. stated that on a daily basis, M.S. or J.S. knock over his compost pile all over his back yard. He stated that he is a gardener and has his compost pile against the fence, and on a daily basis the Tenant's grandson knocks it over (including the day of the second hearing).

C.S. also writes that M.S. throws a tetherball over the fence, damages C.S.'s plants and then pulls the ball back with the tether. C.S. also writes that M.S. kicks a soccer ball against the fence for lengthy periods of time presumably to antagonize C.S.

C.S. also writes that M.S. erects signs, or slides them under the fence and these signs contain rude and insensitive language about M.S. C.S. also writes that M.S. swears at him, calls him a Nazi and makes inappropriate gestures when they see each other.

C.S. also stated that since the Notice was issued, the M.S. swung his hockey stick in his direction and hit the fence. C.S. stated that it is almost every single day that something goes on and on this occasion he felt threatened.

C.S. further testified that since the eviction documents were served J.S. has "exploded". C.S. said that J.S. even admitted that she also knocked over the compost and when he expressed his displeasure her response was "tough beans". He also stated that recently, J.S. went "off the deep end", yelling and screaming at him to such an extent that neighbours behind, in a different complex, yelled at her to watch her language.

In summary, C.S. stated that "these five years have been absolutely horrific living next to these people". He stated that J.S. refuses to believe that her son does anything wrong. He said that he has always just hoped the situation would quieten down and go to some sort of normalcy but it does not.

In response to the Landlord's claims, J.S. testified as follows.

J.S. stated that her mother is 92 years old, and is in palliative care. She stated that she is caring for her mother, as well as her son, who is 40 years old. She further stated that he has a disability in that he is unable to be on his own completely. She confirmed that he has FASE, and is able to travel and bicycle, camp and surf, but emotionally and psychologically he is incapable of living on his own. She further stated that he only lives

on his own when he goes on his holidays including a 2 month hiking trip in Newfoundland and a biking trip in France.

In terms of the allegations relating to C.S., J.S. stated that the area that her son was riding on was shared property until C.S. erected a fence.

J.S. stated that she disagrees with C.S.'s testimony. J.S. stated that the "so called compost" is actually a pile of dead tree needles. She stated that he is blocking out the light from his "so called fence" and it is affecting her cedar trees.

In terms of the Landlord's allegation that she has knocked over C.S.'s compost, J.S. stated that was not true, rather she was pruning the dead branches of the tree. She denied admitting to C.S. that she knocked over his compost pile.

J.S. denied seeing her son hit the ball against C.S.'s house. She stated that he sets up his net and sometimes he hits the fence accidentally.

In terms of the signs, J.S. stated that the "Nazi sign" went up after the fence was erected. J.S. stated that she is a social worker and believes that everyone has a right to be free from violence.

When asked to address her email of November 2018 wherein she acknowledges her son was bothering the neighbour, J.S. raised her voice, and alleged that it was C.S. who threatened her son. She also stated it is C.S. who is the aggressor. She claimed that she has not raised this with the Landlord as they do not feel they have a voice as they are not believed.

In terms of C.S.'s allegation that she was yelling and screaming at him to the extent that a neighbour yelled at her to stop swearing, J.S. stated that it is mutual and the language goes both ways.

J.S. stated that twice she has tried to make peace with C.S. and that her son has tried as well. She stated that her son went to the door and C.S. told him to get off the property and threatened him. J.S. stated that C.S. is manipulative and lying. She also stated that C.S. has exaggerated and likes to look for things to complain about.

J.S. further stated that she feels harassed by the Landlord's representatives. She stated that they have called her at her work, which she found totally inappropriate.

The Tenant's grandson, M.S., also testified. He began his testimony by stating that he was a witness under protest, that he believed that this was not a fair process and that it was unjust. He also stated that he has been harassed by the neighbour and the park staff since 2016.

M.S. denied that he has kicked the ball against C.S.'s fence. He admitted however, that he does kick over the compost pile *daily* because it was blocking the light and was damaging the cedar tree. He denied doing it with a ball; rather he said he kicked it over with his foot. He stated that he does this every day because C.S. built the fence to antagonize them. He acknowledged that the dispute is between him and C.S. not his grandma.

M.S. confirmed that he made signs to let C.S. know that he was a Nazi because of the fence he was creating. He stated that he believed it was appropriate because that's what Nazi's do.

M.S. denied yelling and screaming at C.S. and stated that it was C.S. who threatened him.

M.S. also denied hitting the hockey stick against the fence. He stated that he shoots on a net in the backyard on the porch, not against the fence.

M.S. finished his testimony by stating that this has been an ongoing infringement of his human rights and that it doesn't matter what is decided because they will not move out until they decide.

At the conclusion of the hearing, the Tenant stated that she is 92 years old and worked her whole life to buy her home. She stated that she does not want to move. She also stated that she has never seen the neighbour's children and does not believe he has a relationship with them. She did not provide any specific response to the allegations giving rise to the Notice.

### Analysis

Ending a tenancy is a significant request and must only be done in accordance with the *Manufactured Home Park Tenancy Act*. Section 40 allows a Landlord to end a tenancy for cause. In this case, the Landlord issued the Notice pursuant to section 40(1)(c)(i) which reads as follows:



**40** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- ...
- (c) the tenant or a person permitted in the manufactured home park by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the manufactured home park,
- ...

There is no suggestion the Tenant has engaged in any behaviour giving rise to the Notice. As noted above, section 40 allows a Landlord to end a tenancy due to the behaviour of others; in this case, the allegations relate to occupants/persons permitted on the property by the Tenant, namely, the Tenant's daughter and more particularly, her grandson, M.S.

Although the Tenant is the owner of the manufactured home and in the normal course would be able to move the home to another park, the evidence suggests the manufactured home is no longer mobile, such that if the tenancy ends the home will need to be sold. The Tenant is in palliative care and, understandably does not wish to leave her home.

The Landlord's counsel stated that the Landlord has no issue with the Tenant, is very concerned about her, and understands the significance of her situation. The documentary evidence confirms the Landlord has suggested to the Tenant that her grandson move from the manufactured home to preserve her tenancy. The Landlord has clearly tried to resolve matters without ending this tenancy. The Tenant's daughter cares for the Tenant, as well as for her 40 year old son; she refuses to consider options which may preserve her mother's tenancy. There is no doubt this is a very difficult situation.

While I am mindful of the Tenant's health issues, and I have immense compassion for her current circumstances, after consideration of the testimony and evidence before me, I find that the Landlord has provided sufficient evidence to support a finding that the Tenant's grandson has *significantly* interfered with and *unreasonably* disturbed another occupant of the manufactured home park. The Landlord submitted substantial documentary evidence which confirms that this has occurred for a number of years.

Despite repeated warnings, over the course of nearly four years, that her tenancy was in jeopardy due to her grandson's behaviour, the grandson continues to behave in a way which significantly and unreasonably disturbs C.S.

During the hearing the Tenant's grandson admitted to knocking over C.S.'s compost pile daily. He stated that he did this as he believes the pile was put there to block their sunlight. This belief appears to be shared by his mother, J.S.

The Tenant's grandson also admitted to making derogatory signs accusing C.S. of being a Nazi. Such behaviour is simply not acceptable between neighbours.

Although J.S. acknowledged in her email of November 2018 that her son was bothering C.S., she downplayed the severity of the situation during her testimony and suggested it was C.S. that was the aggressor. I do not accept her testimony in this regard. Although J.S. clearly wishes to protect her son, I find that she was aware, at least in November of 2018, that her son was impacting the neighbour in an unacceptable way.

I accept C.S.'s testimony that this situation has become totally unbearable. I also accept his evidence that he is subjected to the Tenant's grandson's behaviour on a daily basis and now fears for his safety. C.S. has brought this to the Landlord's attention on numerous occasions and the documentary evidence supports his statement and his testimony as to the severity and frequency of the disturbances.

Notably, the Tenant did not deny the allegations with respect to her grandson. While she is clearly of poor health, she confirmed she understood the nature of the hearing, and the allegations made.

**I therefore find that the Landlord has proven the reasons for issuing the Notice on a balance of probabilities. As such, the Tenant's request for an Order that I cancel the Notice is dismissed.**

Section 48 of the *Manufactured Home Park Tenancy Act* provides as follows:

**Order of possession for the landlord**

**48** (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director *must* grant to the landlord an order of possession of the manufactured home site if

(a) the landlord's notice to end tenancy complies with section 45 [*form and content of notice to end tenancy*], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

[emphasis added]

I have reviewed the Notice and find it complies with section 45. As I have dismissed the Tenant's application to cancel the Notice, I *must*, pursuant to section 48 of the *Act*, grant an Order of Possession to the Landlord. As the effective date of the Notice has passed, this Order will be effective two (2) days after the Landlord serves the Notice on the Tenant. The *Act* provides me no discretion in this regard. If necessary, this Order may be enforced in the B.C. Supreme Court.

### Conclusion

The Tenant's application is dismissed. The Tenant shall end in accordance with the Notice. The Landlord is granted an Order of Possession.

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 19, 2019

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Residential Tenancy Branch