



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GRAPPA INVESTMENTS CORP. and  
[tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNC OLC FFT

### **Introduction**

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice), pursuant to section 40 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. The landlord's agent S.M. attended on behalf of the corporate landlord.

As both parties were present, service of documents was confirmed. The landlord's agent confirmed receipt of the tenant's Application for Dispute Resolution and evidence. The landlord's agent confirmed that the landlord did not submit any evidence in this matter but intended to rely upon the evidence submitted by the tenant, and the testimony of Witness K.J. Based on the undisputed testimonies of the parties, I find that the landlord was sufficiently served with the notice of this hearing and the tenant's evidence in accordance with the *Act*.

### Preliminary Issue – Unrelated Claim

The tenant's application included an unrelated claim for the landlord to comply with the *Act*, regulations and/or tenancy agreement, in addition to his claim to dispute the landlord's One Month Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the additional claim requesting an order for the landlord to comply with the *Act*, regulations and/or tenancy agreement is not related to the tenant's application to cancel the One Month Notice, and therefore it is dismissed, and I grant the tenant liberty to reapply for this claim subject to any applicable limits set out in the *Act*.

### Preliminary Issue - 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?

Is 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.

A written tenancy was not submitted into evidence, but the parties confirmed that this month-to-month tenancy began July 2016 and that monthly site rent of \$629.00 is payable on the first of the month. The tenant confirmed that he owns the manufactured home situated on the rental site within the landlord's manufactured home park.

A copy of the One Month Notice dated July 15, 2019 was submitted into evidence, which states an effective vacancy date of August 31, 2019, with the following box checked off as the reason for seeking an end to this tenancy:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*

I note that the landlord's agent has provided the following details regarding these reasons to end tenancy in the "Details of Cause" section provided on the form:

*Despite numerous verbal & written warnings, the Tenant has repeatedly harassed and verbally assaulted the Manager, other Tenants and Guests. Most recent incident was on July 13, 2019 at approximately 8:30pm, when the Tenant verbally confronted a guest at a private function at the Clubhouse. When Manager, Susan asked him to go back in his house and leave the Guest alone, the tenant yelled and swore at Manager and her boyfriend. He called me a "fucking bitch". This was witnessed by many people and recorded.*

(Transcribed as written)

The landlord's agent referred to a letter dated March 8, 2019, contained in the tenant's evidence package, addressed to the tenant from the landlord's agent, as a formal written warning provided to the tenant to cease contacting the landlord's agent after business hours, other than for emergencies, or when intoxicated, and that harassment of the landlord's agent or any other residents of the park would not be tolerated.

The landlord's agent claimed that a prior warning letter had been issued to the tenant February 1, 2019, but the tenant denied receipt of this and the landlord's agent failed to submit a copy into evidence to support her testimony.

The March 8, 2019 warning letter referenced an incident on the night of March 6, 2019 which involved police attendance due to complaints lodged by the tenant's neighbours against the tenant. No police report or any evidence regarding further police involvement was submitted into evidence by either party. The following evening, March 7, 2019, the tenant attended after hours at the landlord's agent home seeking to give her documentation regarding his complaints about his neighbours. The landlord's agent claimed that the tenant was intoxicated and persistent in pressing her to accept his documents even after directing him to leave the information in the office mail slot.

The letter also referenced a prior incidence involving the tenant attending a Halloween social event in October 2018 at the park's clubhouse. The tenant acknowledged he had "too much to drink that night" when he confronted the landlord's agent at the event regarding his complaints about the neighbouring tenants.

Since the issuance of the formal warning letter on March 8, 2019, the landlord's agent testified that there had been an incident on July 13, 2019, which resulted in the issuance of the One Month Notice. On that evening, a social event was taking place at the park clubhouse. The landlord's agent testified that the tenant came out of his home to take pictures of vehicles that he claimed were blocking the roadway and began "yelling and swearing" at the landlord's agent that the vehicles need to be moved in case of an emergency. The landlord's agent testified that she tried to assure the tenant that the owners of the vehicles were right there and could move the vehicles if needed, and requested that he calm down and go back inside his home.

The landlord's agent called on Witness K.J. to provide her testimony regarding the incident on July 13, 2019 as she was present. According to Witness K.J., the tenant was taking pictures and that the landlord's agent requested that the tenant stop taking pictures, at which point the tenant became belligerent and used verbally offensive language towards the landlord's agent. As a result, the male friend of the landlord's agent reacted to confront the tenant's behaviour. Witness K.J. testified that the tenant appeared to have been drinking and when she tried talking to the tenant to urge him to go inside his home he refused and became belligerent to her. Witness K.J. testified that she had previously interacted with the tenant at the October 2018 Halloween party. On that occasion the tenant was intoxicated and became belligerent to the landlord's agent

as she did not want to address his complaints at that time. Witness K.J. testified that she tried to assist getting the tenant to leave the event and go home, at which point the tenant used offensive language towards her.

The tenant claimed that Witness K.J. was “lying” as he claimed she was afraid of the landlord’s agent and that they were “ganging up” on him. Witness K.J. denied the tenant’s accusations.

### 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.

In this matter, the tenant received the One Month Notice on July 16, 2019, and filed an application to dispute the One Month Notice on July 24, 2019, which is within the 10-day time limit provided to dispute the notice. As such, I find that the tenant has 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*.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their version of events.

The landlord failed to submit any evidence of their own, and relied solely on the evidence submitted by the tenant. Although the landlord’s agent testified that the tenant’s neighbours have called the police due to his actions, by the same token, the tenant testified that he has called the police due to the neighbour’s actions. Neither party submitted into evidence a police report or corroborating evidence to assist me in determining the reliability of this testimony. The landlord did not call on any other residents of the park to testify or submit any evidence regarding significant interference or unreasonable disturbance, other than Witness K.J., who provided testimony pertaining to two brief interactions she had with the tenant in which she testified he became belligerent to her when she tried to tell him to go home. In these two

interactions, I find that Witness K.J. opted to involve herself in the situations but was under no obligation to interact with the tenant, and therefore I do not find that there is sufficient evidence to consider that Witness K.J. was significantly interfered with or unreasonably disturbed as she could have walked away from the situation at any time rather than deciding to engage with the tenant in trying to get him home.

As such, I find that the landlord's grounds for ending the tenancy on the basis of significant interference or unreasonable disturbance pertain to the tenant's interactions with the landlord's agent only.

Therefore, based on the testimony and evidence presented by the parties, on a balance of probabilities, I find that since the date of the formal warning letter issued to the tenant on March 8, 2019, the only evidence presented by the landlord's agent of any further incidents between the tenant and the landlord's agent occurred on July 13, 2019. Based on the testimony presented, I find the tenant's actions in taking photographs of the vehicles parked in the road and of residents sitting nearby, including the landlord's agent, to be immature and unsettling, however, the actions were done in a public space where photographs can be taken. According to Witness K.J., the landlord's agent requested that the tenant stop taking pictures, at which point the tenant became belligerent and used verbally offensive language towards the landlord's agent. As a result, the male friend of the landlord's agent reacted to confront the tenant's behaviour, further escalating the situation. I find that this incident involved other parties, such as the friend of the landlord's agent who confronted the tenant, and whose actions and comments may have escalated and exacerbated the tenant's behaviour and response to the situation. Although I find that the tenant's use of verbally offensive language towards the landlord's agent completely unacceptable, given the involvement of other parties in the incident, I am unable to find that in this particular incident, the tenant was solely responsible for the resulting disturbance caused by this incidence. As such, I have not found sufficient evidence presented by the landlord that the tenant has continued to contact the landlord's agent after business hours since the formal warning letter was issued, save for the incident on July 13, 2019, and as explained above, I find that incident involved several parties with responsibility for escalating the situation.

As such, I find that the landlord has failed to satisfy the burden of proving the grounds for ending the tenancy for cause. The tenant's application is successful and the landlord's 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 tenant was successful in his application, he may, pursuant to section 65 of the *Act*, recover the \$100.00 filing fee from the landlord. In place of a monetary award, I order that the tenant withhold \$100.00 from a future rent payment on one occasion.

The tenant is cautioned that should his verbally offensive language and behaviour resume, the landlord is at liberty to re-issue another notice to end tenancy at a future date.

### Conclusion

The tenant was successful in his application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated July 15, 2019 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 tenant 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: September 20, 2019

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Residential Tenancy Branch