



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC

### Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause dated June 29, 2019. Both parties appeared and were represented at the hearing. The hearing was held over three dates and two Interim Decisions have been issued. The Interim Decisions should be read in conjunction with this decision.

The parties were permitted to make relevant submissions and submit evidence; and, to ask questions of each other, their witnesses, and to cross examine witnesses. Each party called two witnesses to testify over the course of the hearing. The witnesses were excluded from the proceeding until they were called to testify and were affirmed.

As seen in the second Interim Decision, I had ordered the landlord to (re)serve evidence upon the tenant. At the commencement of the third hearing session, I confirmed that the landlord complied with my order and the tenant is in receipt of all of the landlord's evidence, which he had also shared with his legal advocate.

It should be noted that I heard hours of verbal testimony and submissions and I was provided a considerable amount of written evidence and documentation, all of which I have considered; however, with a view to brevity in writing this decision, I have summarized the parties' respective positions and referenced only the most relevant evidence.

### Issue(s) to Determine

1. Should the 1 Month Notice to End Tenancy for Cause dated June 29, 2019 be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession and if so, when shall it be effective?

## Background and Evidence

The tenancy started approximately six years ago in 2013 and the tenant is required to pay rent of \$350.00 on the first day of every month for the rental site.

The subject 1 Month Notice to End Tenancy for Cause ("1 Month Notice") was served upon the tenant on June 29, 2019. The 1 Month Notice was accompanied by a three page type-written letter written by the landlord's lawyer. The tenant filed to dispute the 1 Month Notice within the time limit for doing so.

The reasons for ending the tenancy, as indicated on the second page of the 1 Month Notice are:

<input checked="" type="checkbox"/> Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
<input checked="" type="checkbox"/> significantly interfered with or unreasonably disturbed another occupant or the landlord.
<input checked="" type="checkbox"/> seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
<input checked="" type="checkbox"/> put the landlord's property at significant risk.
<input checked="" type="checkbox"/> Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
<input checked="" type="checkbox"/> damage the landlord's property.
<input checked="" type="checkbox"/> adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
<input checked="" type="checkbox"/> jeopardize a lawful right or interest of another occupant or the landlord.

In the "Details of Cause" section of the 1 Month Notice, the landlord referred to the three page letter written by the landlord's lawyer on June 28, 2019 (herein referred to a "the Details of Cause").

As described in Details of Cause, the subject 1 Month Notice is the third 1 Month Notice the landlord has issued to the tenant. The first 1 Month Notice was issued to the tenant on June 25, 2016 and it was accompanied by a letter from the landlord describing the reason(s) for ending the tenancy as being due to the tenant getting drunk and threatening to kill or beat-up other tenants; however, the landlord agreed to withdraw that 1 Month Notice on July 22, 2016 following the receipt of:

- A letter signed by the tenant on July 1, 2016 asking the landlord to consider his "renewed commitment to improve my health and refrain from engaging in conflict with my neighbours...I am connected to a health care team that will support me in making...lifestyle changes..."
- A letter from a nurse with Island Health dated July 1, 2016, confirming "a health care partnership" between the tenant and Island Health's Intensive Case Management Team and that the health care worker would be meeting with the

tenant twice every week “to address his physical, mental and emotional health...”

- A signed handwritten statement from the tenant dated July 19, 2016 promising to abide by the park’s written Code of Conduct, apologizing for the tenant’s past behaviour, and specifically acknowledging that there would be no more chances in the event of any recurrence.

The Details of Cause goes on to describe a number of complaints concerning the tenant’s behaviour in 2017 and then again in January 2019 and April 2019 that include threats of physical harm to other tenants which resulted in the landlord issuing a second 1 Month Notice to End Tenancy for Cause that was served on April 27, 2019. The tenant disputed the second 1 Month Notice and a hearing was held on June 17, 2019; however, the Arbitrator presiding over that proceeding determined that the 1 Month Notice was invalid due to the absence of a date next to the landlord’s signature. The Arbitrator did not make any findings as to whether there were sufficient grounds for eviction (file number referenced on the cover page of this decision).

In issuing the subject 1 Month Notice on June 29, 2019 and the Details of Cause that accompanied it, the landlord’s lawyer referred to the earlier disturbances described above in addition to a description of events that took place in May 2019 and June 2019 that include utterance of threats of physical violence, death threats, and threats of arson.

### **Landlord’s position**

The landlord testified that she has received numerous complaints from other tenants concerning disturbing behaviour by the tenant, including threats to kill people, including other tenants and the landlord, fighting with other tenants, threats to burn down the landlord’s house, threats to kill the tenant’s own dog, and harassment of the landlord’s campsite guests. The landlord explained that she has tried working with the tenant over the past few years but that despite repeated warnings the tenant continues to disturb the other occupants and she has an obligation to protect the landlord’s other occupants.

The landlord’s documentary evidence included several warning letters issued by the landlord to the tenant that are subsequent to the withdrawal of the first 1 Month Notice, including:

- A letter dated October 17, 2017 describing complaints of two other tenants against the tenant that include a complaint that the tenant threatened him for no reason and another tenant had reported to the landlord that the tenant is not

welcome at his site if the tenant has been drinking. The landlord cautions the tenant that further complaints from other tenants will result in an eviction notice.

- A letter dated December 30, 2017 describing complaints of two other tenants that include complaints that the tenant threatened to kill the complainant three times in the previous months and a complaint by a different tenant that the tenant has been disturbing him and making a hand-gun gesture toward him. The landlord cautions the tenant that further complaints will result in an eviction notice.
- A letter dated January 5, 2019 describing the tenant being drunk again and another tenant complaining that the tenant has threatened to kill the complainant with a gun that resulted in a physical fight between the complainant and the tenant and police involvement; and, a different incident involving another tenant that was threatened by the tenant the previous month. The landlord cautions the tenant that further complaints will result in an eviction notice.
- A letter dated April 11, 2019 requiring the tenant to put his dog on leash and asking the tenant to notify them if he cannot afford a collar or leash for his dog.
- A letter dated June 22, 2019 describing a complaint by another tenant complaining of being disturbed and threatened by the tenant including a threat to punch her partner in the head.

The landlord had also included warning letters to the tenant dated July 25, 2019, July 29, 2019 and July 31, 2019; however, those pieces of evidence were withdrawn since they post-dated the subject 1 Month Notice.

The landlord also included a copy of the complaint letter written by the tenant's neighbour on June 18, 2019 that resulted in the landlord's warning letter to the tenant on June 22, 2019. In the complaint letter the complainant described the tenant as threatening to punch another occupant in the head and that the tenant had stated he "couldn't wait to show [name omitted for privacy reasons] what his fist felt like" and that the tenant threatens to kill his own dog and the dogs of other occupants. The complainant states that if the tenant speaks to her again she will likely involve the police.

The landlord testified that she has seen the tenant fighting with others on the property a number of times with the most recent time being in March 2019 when the tenant was physically fighting with another tenant (referred to by initials CB). The police were called to the property. The landlord pursued eviction of CB and the tenant. The landlord confirmed that CB has since vacated the property.

The landlord testified that she also witnessed the tenant fighting with another tenant (referred to by initial D) in the site across the road from the tenant approximately one year ago, in the driveway.

The landlord testified that she has observed the tenant shouting at another neighbour (referred to by initial K) on June 11, 2019.

The landlord also testified that the tenant permits his dog to be off-leash and the tenant's dog fights with other dogs on the property.

The landlord's husband testified that he has heard fighting between the tenant and another neighbour (referred to by initials PT).

**Landlord's witness (referred to by initials RS)**

RS testified that she is also a tenant residing in the manufactured home park.

RS testified that she heard the tenant yelling that he was going to kill his dog, kill and the landlord and kill everyone else 3 or 4 times, including on June 20, 2019. RS stated that the tenant indicated he would stab or kill people with knives. RS stated that the tenant's witness ET was present when the tenant made these threats.

RS testified that she observed the tenant fighting with CB in March 2019 that included threats by the tenant to stab CB and banging on CB's trailer.

RS testified that she witnessed the tenant fighting with another tenant "D" approximately one year prior.

RS testified that she has observed the tenant banging on the trailer of another tenant, referred to by initial "M".

RS described the tenant has being involved in multiple altercations with other occupants especially when he drinks. Many times the disturbances are late at night and this has been on-going for approximately 4 to 5 years. RS described the disturbances as following drinking and then the tenant starts screaming that he is going to kill people or bangs on other people's trailers or looks to fight other people.

**Landlord's witness (referred to by initials PT)**

PT testified that he is also a tenant of the manufactured home park and his site is across the road from the tenant's site.

PT testified that he has had a number of encounters with the tenant that include threats by the tenant. Initially, the tenant threatened to beat him up but more recently the tenant has threatened to kill him in a variety of ways including hanging, shooting him with a .357 magnum, and kidnapping and torturing him.

PT testified that he has heard the tenant threaten RS including threats to kill her and burn her trailer down.

PT testified that he has also heard the tenant threaten to kill his own dog.

PT testified that he saw the tenant chasing another tenant, "K", in an attempt to fight K but when the tenant could not catch K, the tenant beat on his own truck.

PT stated that he has called the police four times with respect to the tenant's conduct to create a record of events; however, PT could not provide the dates of doing so and did not produce any police reports.

PT described an incident approximately 3.5 months prior whereby the tenant had a chainsaw that he was revving at high speed and pointing it towards the landlord's house and other homes. The police were called and attended the property to respond to the situation and when the police attended the tenant put the chainsaw into a piece of wood at full speed which is not how one cuts wood with a chainsaw.

PT stated that he has videos and photographs of the tenant stalking him; however, he has not provided the landlord with copies of those videos or photographs.

PT described the tenant as being intoxicated when he acts out against others.

PT denied that he has ulterior motives against the tenant and claims he is only motivated to come forward as he is tired of the tenant's terrorizing behaviour and being threatened by the tenant.

The tenant's advocate pointed out that PT did not provide specific dates or timeframes with the exception of the chainsaw incident and did not provide any of the video or photographs he claims to have.

### **Tenant's position**

The tenant denied assaulting anybody or making threats to assault, shoot or stab anybody or commit arson. The tenant stated that he considers the occupants of the manufactured home park to be "like family" to him and he wishes to continue his tenancy there.

Under cross examination, the tenant acknowledged that he had owned guns in the past and that he is currently prohibited from owning firearms following a trial 6 or 7 years ago. The tenant denied that he is currently prohibited from drinking alcohol.

The tenant acknowledged that he had received the first eviction notice in 2016 and had signed the letters given to the landlord in July 2016 including requests for another chance with promises to obey the rules; however, with respect to the July 19, 2016 letter the tenant claims he was only apologizing for his drinking and his dog not being on a leash.

The tenant acknowledged that in subsequent letters from the landlord, in October 2017, December 2017 and January 2019 the landlord cautioned the tenant that he would not be given any more chances.

With respect to a complaint letter of his neighbour, the tenant agreed that those neighbours were new tenants in early June 2019, that he had a good relationship with them at first but that by mid-June they did not have a good relationship amid accusations they were making against him.

### **Tenant's witness (referred to by initials ET)**

ET testified that she is also a tenant in the manufactured home park and her site is approximately 200 meters from the tenant's rental site.

ET considers the tenant to be helpful neighbour to her and has never seen or heard the tenant assault or threaten to assault, shoot, kill, or commit arson, or otherwise create disturbances.

ET denies being present while the tenant was making threats in front of the landlord's witness RS.

ET indicated that there is animosity between her and RS.

ET considers the tenant's dog to be good with children.

With respect to the chainsaw incident, ET testified that she heard the chainsaw and saw the tenant with a chainsaw but did not see the tenant acting in a threatening manner when he had the chainsaw. ET stated that it appeared as though the tenant was going to cut a piece of wood with the chainsaw.

Under cross examination, ET acknowledged that she only saw the tenant with the chainsaw after the police were already in attendance at the property and that she was approximately 150 to 200 meters away at the time.

#### **Tenant's witness (referred to by initials AW)**

AW testified that he is also a tenant of the manufactured home site and that he has not seen or heard the tenant assault anybody or make threats to assault, kill, stab or shoot anybody.

AW considers the tenant's dog to be a friendly animal.

AW testified he was not present when the tenant was involved in the chainsaw incident.

Under cross examination, AW stated that he considers the tenant to be a good friend that he visits everyday. AW acknowledges that he has had alcoholic drinks with the tenant approximately once per week but does not consider him to be a "drinking buddy".

AW acknowledged that he went to the landlord after the tenant was involved in a fight with another tenant, CB, but explained that is because the tenant was injured. AW stated he did not witness the fight.

#### **Closing arguments of landlord**

The landlord's lawyer submitted that the events of 2016 demonstrate a history of behaviour on part of the tenant and those matters were not resolved. Rather, the landlord agreed to withdraw the first 1 Month Notice due to an undertaking by the tenant which he has subsequently breached.



A 1 Month Notice issued in April 2019 was invalidated due to a technical error on the form but that those events were not decided upon and form part of the reasons for issuance of the subject 1 Month Notice.

The landlord's evidence shows repeated incidents of violence, threats to the landlord, threats to other tenants, and despite repeated warnings issued by the landlord the tenant's offending behaviour continues.

With respect to the landlord's evidence, the landlord's lawyer pointed out that I have discretion to admit hearsay evidence as the Rules of Evidence do not apply to these proceedings and it is commonly accepted in these types of proceedings to consider such evidence including written statements of other tenants. Evidence I am urged to consider includes the written statements of other occupants of the park and the numerous written warnings the landlord wrote to the tenant.

The landlord has a duty to investigate complaints made by other occupants and to take action and the landlord did so and documented such complaints and her action in the meticulous records she kept over the last three years.

In addition to the six written complaints, the landlord has received numerous other oral complaints.

Given all of the complaints from various people and the landlord's numerous letters to the tenant over three years, it is not likely that the landlord manufactured false evidence. In contrast, the tenant did not provide reliable rebuttal evidence, especially considering his witnesses did not see the events discussed or explored in this proceeding. Rather, the tenant's witnesses are more akin to character witnesses which do not serve to aid in determining the facts.

The landlord requested an Order of Possession effective October 31, 2019; however, the landlord was agreeable to an Order of Possession with an effective date of November 30, 2019 to give the tenant sufficient time to ready his recreational vehicle for relocation.

### **Tenant's closing arguments**

The tenant's advocate argued that the events put forth by the landlord either did not occur or were grossly exaggerated. The tenant has been unfairly targeted, and he is a good tenant of the park. The tenant provided two witnesses and a letter from another

tenant for consideration. A letter written by another tenant, referred to by initials RM, describes the tenant as being trustworthy and the tenant has a tendency to want to help others.

The tenant seeks to continue his tenancy at this park where he has been a tenant for a number of years and considers many occupants to be like family. There is also a housing crisis and the tenant has been unable to secure alternative housing as of yet. However, in the event the 1 Month Notice is upheld, the tenant requested that he be given until November 30, 2019 to vacate since he has to perform work on his trailer to enable it to be towed.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where multiple reasons are indicated on a Notice to End Tenancy, it is sufficient to end the tenancy where one reason is proven.

The landlord's burden of proof is based on the civil standard, which is on the balance of probabilities, and not the criminal standard of beyond a reasonable doubt.

As submitted by the landlord's lawyer, section 68 of the Act provides that the rules of evidence do not apply to dispute resolution proceedings conducted pursuant to the Act and I have discretion to admit evidence even if the evidence would not be admissible under the laws of evidence. Section 68 of the Act provides as follows:

#### **Rules of evidence do not apply**

**68** The director may admit as evidence, whether or not it would be admissible under the laws of evidence, any oral or written testimony or any record or thing that the director considers to be

(a) necessary and appropriate, and

(b) relevant to the dispute resolution proceeding.

In hearing from the witnesses called to testify during the hearing, I instructed the witnesses to limit their testimony to events they had personally seen, heard or experienced and to refrain from describing what they heard from other people. I have considered the testimony of all of the witnesses called to testify in making this decision and given the testimony appropriate weight in determining whether the 1 Month Notice should be upheld or cancelled.

I have admitted and considered the written testimony of another tenant in the letter dated June 18, 2019 as I find it relevant since it speaks to the conduct of the tenant leading up to issuance of the subject 1 Month Notice; however, I have also recorded that the tenant had denied making any threats, including those described in the letter of June 18, 2019.

I have read and considered the letter of RM; however, the letter does not specifically address any of the events that were put forth to me and I do not find it overly helpful in determining whether the events occurred or not.

I have also admitted the warning letters issued to the tenant by the landlord as the author of the letters was present for the hearing and subject to examination and questioning and I am of the view the letters serve as a record of communication between the landlord and the tenant and are relevant as they pertain to reports of disturbing conduct on part of the tenant.

Section 22 of the Act conveys to every tenant the right to quiet enjoyment. Quiet enjoyment includes the freedom from unreasonable disturbance and use of common areas free from significant interference. As submitted by the landlord, the landlord has a duty to protect the quiet enjoyment of all of its tenants. Where the behaviour or conduct of one tenant results in an unreasonable disturbance or significant interference of another tenant, the landlord is expected to take sufficient and reasonable action in an effort to stop the offending behaviour. Where the offending behaviour is so egregious or is on-going despite warnings, the tenancy for the offending tenant may be ended. The Act provides the landlord the mechanism to end a tenancy in such instances under section 40(1)(c)(i) and (ii). Section 40(1)(c)(i) and (ii) provide that a tenancy may be ended where:

- (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,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant

The landlord indicated these reasons for ending the tenancy on the 1 Month Notice served upon the tenant.

In short, the tenant is accused of breaching the quiet enjoyment of the other occupants of the property by assaulting another tenant, acting in an aggressive manner toward other tenants and the landlord physically and/or by uttering threats. I consider physical altercations and the threat to physically harm other tenants or their property to be an unreasonable disturbance and/or significant interference of that tenant's rights to use and enjoyment their rental site and common areas. However, the tenant denies such conduct and I proceed to consider whether the landlord has met its burden to prove, on a balance of probabilities, that the tenant is responsible for breaching the quiet enjoyment of the other occupants of the property.

The landlord's two witnesses described the tenant as acting aggressively with them and other tenants and making threats of bodily harm and harm to property, typically when he is intoxicated. While the landlord's witnesses did not provide exact dates as to when such occurrences took place, I found the nature of the tenant's conduct to be consistent with each other and the landlord's numerous warning letters the landlord has issued to the tenant. I also find the landlord's witnesses reliable and the tenant's version of events unlikely in particular with respect to the incident involving the tenant and a chainsaw as I find it unlikely several police officers would attend the property if the tenant was merely preparing to cut a piece of wood as he described.

The tenant presented witnesses; however, his witnesses were not present for the alleged incidents put forth by the landlord in issuing the 1 Month Notice and I found their testimony did not sufficiently refute the events put forth by the landlord.

Also of consideration is that the tenant implied that the fight between him and CB was the result of CB assaulting him since the tenant is the one that had injuries. However, just because one party has the worse injuries does not necessarily mean that party was not a willing participant or the instigator. There is insufficient evidence, especially in the absence of witness testimony, as to who instigated the fight; however, what stands out to me more so is that the tenant was involved in a physical altercation with CB and the tenant has been accused of acting aggressively and making threats of violence against other tenants and occupants of the property. I find the tenant being party to so many incidents involving fighting and threats and aggression is significant and it leads me to draw conclusions concerning the tenant's conduct that are in line with the assertions put forth by the landlord.

While the tenant asserts he has been unfairly targeted, the tenant did not offer any ulterior motive for the landlord to end the tenancy based on false accusations. Rather, I find the numerous warning letters to the tenant and the landlord's withdrawal of a previous 1 Month Notice upon receiving assurances from the tenant and a health

worker to be indicative of a landlord trying to work with the tenant with a view to continuing his tenancy. However, I accept that there comes to a point where the incidents are recurring and becoming too much for the occupants and the landlord to continue to tolerate and endure.

I find the number of complaints against the tenant by a variety of other tenants, the nature of the complaints by the other occupants, along with the numerous warnings to the tenant by the landlord, have satisfied me that the tenant has unreasonably disturbed and significantly interfered with other occupants of the property and those other occupants and the landlord cannot be reasonably expected to continue to endure and tolerate the tenant's conduct. Nor, was I provided any persuasive evidence that the tenant has undertaken steps in an attempt to control his tendency for drinking and violent and aggressive behaviour. Therefore, I find it is reasonable in this case to bring the tenancy to an end and I uphold the 1 Month Notice.

Having upheld the 1 Month Notice, I proceed to consider whether the landlord is entitled to an Order of Possession. Section 48(1) of the Act provides as follows:

**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 rental unit 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.

In this case, I have upheld the 1 Month Notice and I am satisfied that it meets the form and content requirements of section 45 of the Act. Accordingly, I find the criteria of section 48(1) have been met and the landlord is entitled to an Order of Possession.

Provided to the landlord with this decision is an Order of Possession effective November 30, 2019 to serve and enforce upon the tenant.

The tenant remains obligated to pay rent for the month of November 2019.

Conclusion

The 1 Month Notice has been upheld and the tenancy shall end. Provided to the landlord with this decision is an Order of Possession that takes effect on November 30, 2019. The tenant remains obligated to pay rent for the month of November 2019.

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: October 23, 2019

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Residential Tenancy Branch