



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SWIFTSURE DEVELOPMENTS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC**

### **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 (the "**Notice**") pursuant to section 40.

The tenant attended the hearing. The landlord was represented at the hearing by counsel and two agents ("**JP**" and "**NR**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord called two witnesses (the park manager "**BP**" and a neighbour of the tenant "**LM**"). The tenant cross-examined each witness.

### **Procedural History**

This matter previously came to a hearing on November 25, 2019. A written decision was issued following that hearing. The tenant applied for a review consideration of that decision. The review consideration decision was made on December 6, 2019. The reviewing arbitrator ordered a second participatory hearing occur (that is, the present hearing). In writing this decision, I am not bound by any finding of fact made in the decision following the November 25, 2019 hearing. I mention it here only for the sake of completeness of the record.

### **Issues to be Decided**

Is the tenant entitled to have the Notice cancelled?

## **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement starting December 1, 2000 to rent a manufactured home site (the "**Site**"). Monthly rent is \$478. The tenant continues to reside on the Site.

Landlord's counsel stated that the landlord posted the Notice on the door of the tenant's manufactured home located on the Site on August 28, 2019. The tenant confirmed this. The tenant testified that she applied for dispute resolution on September 9, 2019.

The Notice indicates an effective move-out date of October 1, 2019.

The grounds to end the tenancy cited in that Notice were:

- 1) the tenant has allowed an unreasonable number of occupants in the unit/site;
- 2) the tenant or a person permitted on the property by the tenant has
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - has put the landlord's property at significant risk;
- 3) the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to
  - damage the landlord's property;
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
  - jeopardize a lawful right or interest of another occupant or the landlord;
- 4) tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- 5) tenant has not done required repairs of damage to the unit/site;
- 6) breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
- 7) tenant has assigned or sublet the rental unit/site without landlord's written consent

Counsel for the landlord stated that these reason for issuing the Notice came down to two discreet issues:

- 1) the tenant has allowed an individual ("**WW**") to attend and reside on the Site, and the landlord alleges:

- a. he has caused unreasonable disturbances to the other occupants of the manufactured home park (the "**Park**");
  - b. he is selling drugs out of the tenant's manufactured home; and
  - c. is responsible for an increased amount of crime in the Park, either directly committing it, or by invite people into the Park (for the purpose of purchasing drugs) who commit the crimes.
- 2) the tenant has failed to keep her manufactured home in good condition.

The tenant denied that WW lives on the Site but does admit that he stayed with her for a two-week period in the summer of 2019, and that he is the boyfriend of a friend of hers. She denies that she or WW is responsible for any of the allegations set out on the Notice.

The landlord relied heavily on the testimony of its park manager "BP" in support of these two allegations. On the issue of WW, he testified that:

- 1) he saw WW, with all his belongings, moving into the Site;
- 2) WW has an "unsavory reputation";
- 3) neighbours are worried and scared of WW;
- 4) he has escorted many people out of the Park who were looking for the tenant or the Site;
- 5) the RCMP have told him that drugs are being dealt out of the Site;
- 6) there was a break-in at a neighbours unit, and the police attended with a dog, who followed a trail to the Site;
- 7) neighbours of the tenant have complained to him that they are disturbed by yelling and swearing coming from the Site during the night;
- 8) neighbours have complained to him about the increased number of people visiting the Park;
- 9) he has seen people who do not live in the Park walking around the Park high on drugs;
- 10) one such person was sleeping in one of the Park's "kiosks";
- 11) another individual was found to be sleeping in an electrical shed located on or near the Site; and
- 12) the RCMP frequently visit the Site.

The landlord entered no documentary evidence (such as police reports, photos, or video) in support of BP's testimony, beyond:

- 1) an article from a "CrimeStoppers" publication from 2017 stating that WW is "wanted for assault, assault with a weapon, uttering threats, and failing to appear; and

- 2) a printout from the BC Provincial Court website listing court proceedings against WW, ranging from 2001 to 2019.

The tenant denied BP's allegations entirely, with the caveat that WW stayed with her for two weeks during the summer of 2019. She denied that drugs were dealt from the manufactured home, that people were coming to the Park to buy drugs from her or WW, and that she had any connection to the individual sleeping in the Park's kiosk or in the electrical shed.

On the issue of the condition of the Site, BP wrote a letter, the contents of which he adopted as true during his testimony, which stated:

I became Park Manager in 2015.

One of the first things I did was clean up in the park. Geraldine's son and I removed five (5) pickup truck loads of carpets, rotten wood and assorted junk from her property and placed it in the dumpster in the park. Since this time more of the same has accumulated in her yard. This summer her lawn has been covered in things from her shed and covered with tarps when it rains. There has been a pile of 10 to 12 stripped bicycles on her driveway for two months, ignoring requests to remove them.

The maintenance of her home is almost non-existent. Her front porch is totally rotten. The only reason it is still up is the junk underneath is holding it up. Her raised walkway to her door is rotten and unsafe to walk on. Skirting is rotten or missing completely. Sheds and roofs are covered in tarps.

The landlord submitted two photos of the Site into evidence, the first of which shows items stored under the manufactured home's porch. There appears to be a gap between these items and the floor of the porch. The paint on parts of the porch has worn away, but I cannot tell from the photo of the porch is "totally rotten" as alleged by BP. The second shows the side of the Site, which contains a shed full of items, a lawn (clear of objects, for the most part), and some plants growing along the side of the manufactured home. I am uncertain as to the significance of this photo.

The tenant denied that the Site was in poor condition. She submitted several photos of the Site, in which the Site appears to be well-maintained. I am unsure when these photos were taken.

The landlord called LM, a neighbour of the tenant, as a witness. LM testified that she does not feel safe in the Park due to WW's presence. She testified that, during the summer of 2019, her daughters were playing the front yard of their site when WW approached them and asked them questions in an aggressive fashion. She testified that this scared her children, and that she does not let them play in the front yard any more. She testified that this was the only interaction she had with WW. She testified she gets a "weird vibe" from WW but could not provide examples of why this is the case. She did not give any evidence as to loud noises or yelling coming from the Site late at night. She testified that she has seen WW "all the time" at the Park.

LM testified that she has seen police at the Site "eight to ten times" in the past four months, and only three to four times in the ten years prior to that. She testified she is unaware of the reason for the recent police visits.

LM testified that BP came to and told her to "watch the girls" (LM's daughters), and that WW was "a violent person". She denied that BP gave her a copy of WW's criminal record.

The landlord entered two other letters from neighbours of the tenant into evidence, although neither of the authors were called to give evidence. In one, the neighbour complained of "loud banging" coming from the Site at 1:00 or 2:00 am, and "unsavoury" people in the Park who made her feel "afraid". She wrote that she "really didn't know if these people were anything to do with [the Site] or just weirdos." The neighbour also wrote that she was informed that someone staying with the tenant (the neighbour did not know the person's name) has a "violent past which is unsettling".

In the second letter, the neighbour wrote, in its entirety:

Rotten sundeck, junk all over yard.  
Things missing.  
Fear of unsavoury people coming and going.  
People on my property.  
Smell of mould!

## **Analysis**

Rule of Procedure 6.6 states:

### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, in this case, although it is the tenant's application to cancel the Notice, the landlord must prove that the allegations contained on the Notice are true, on a balance of probabilities.

I find that the Notice is deemed to have been served on August 31, 2019 (three days after it was posted on the tenant's door), and the tenant applied to dispute it on September 9, 2019.

#### 1. Neighbour's Letters

The landlord did not call the authors of two of the letters as witnesses. I am not aware of any reason why either neighbour was not called to give testimony. As such, the tenant did not have the opportunity to cross-examine either. Accordingly, I assign less evidentiary weight to the contents of the letters than I do to the testimony of the tenant and of BP and LM.

#### 2. Condition of Site

BP and the tenant provided conflicting testimony as to the condition of the Site and the manufactured home located thereon. The photographs provided by the landlord of the porch contradict the testimony and the written statement of BP. The porch does not appear to be so rotten that it is held up by the items beneath it; there is a clear gap between the items underneath it and the floor of the porch. The photographs provided by the tenant depicted a relatively well-maintained property.

I find that the landlord failed to provide sufficient documentary evidence to establish that the Site or the tenant's manufactured home was in such a condition as to warrant ending the tenancy.

### 3. WW's Presence in the Park

The parties have provided conflicting evidence as to the length and nature of WW's stay at the Park. The landlord has failed to provide any corroborating documents of its allegation. I would have expected logs kept by BP, RCMP records, or photos or videos of offensive conduct perpetrated by WW or others he or the tenant allegedly allowed or invited to the Park to have been entered into evidence.

I accept that "unsavoury" individuals are entering the Park. I accept BP's evidence that some of these individuals seek to attend the Site or are looking for the tenant. However, the landlord has failed to demonstrate that these individuals have done anything which would warrant ending the tenant's tenancy. The landlord has not proven any connection between the tenant, WW, or people that the tenant or WW have invited or permitted into the Park, and any act that would warrant ending the tenancy (as listed on the Notice). Mere "unsavouriness" of visitors is not sufficient to end a tenancy.

I find that the landlord has failed to prove that WW continues to reside on the Site. I accept the tenant's evidence that WW stayed with her for two weeks during the summer of 2019. In any event, I find that the landlord has failed to prove that WW has engaged in any conduct that would warrant ending the tenancy.

BP alleged that significant noise came from the Site during this time (and other), however, LM did not make any mention of noise issues with LM during her testimony. I infer from this that the disruption was either so minor or infrequent as to not leave an impression on LM. Accordingly, I find that such noise could not be considered to have "unreasonably disturbed" the tenant's neighbours.

I accept that WW confronted LM's children in an inappropriate manner which frightened the children. This occurrence is the only concrete example provided by the landlord of misconduct by WW. Although inappropriate, and in light of the fact it was an isolated event, I do not find that it rises to the level of "significant interference or unreasonable disturbance" necessary to end the tenancy.

The bulk of the submissions regarding WW by BP and LM concerned WW's character and past conduct (for example, the "vibe" WW gave off, or WW's alleged criminal record). Without demonstrable examples of misconduct beyond the event described above, I cannot find that the allegations of the landlord properly form the basis to end the tenancy.

I also note that LM testified that the police have attended the Site eight to ten times in the past four months (which I understand to mean since late September 2019, at the earliest). The Notice was issued on August 28, 2019. As such, any conduct alleged to have occurred since it was issued cannot form a basis to end the tenancy. Accordingly, I assign no significance to LM's testimony regarding the increase in RCMP attendance at the Park.

I am concerned that LM's and the other neighbours fear of WW is created or contributed to by BP's telling them of WW's violent history (as testified to by LM), rather than any actual event or interaction. A commonality of all the neighbours evidence is that of fear or unsettlement caused by visitors to the Park (which may include WW) without any evidence of actions which instilled such fear. In light of this absence of evidence regarding the basis for this fear in connection to the tenant or people she allowed into the Park, I must find that it is unfounded.

It is not appropriate to end a tenancy on the basis of unsubstantiated fears.

I am explicitly *not* finding that the Park has *not* experienced an influx of individuals who do not live there. I accept BP's evidence on this point (as stated above). I instead find that the landlord has failed to prove a connection between those individuals who have acted in breach of the Act and the tenant herself. Such a connection is necessary for the Notice to be valid. (I note that it is not enough for the landlord to prove that some of the non-resident individuals are visiting or looking for the tenant; proof of their breach of the Act is also necessary.)

As such, I order that the Notice is cancelled and of no force or effect. The tenancy shall continue.



**Conclusion**

I grant the relief sought by the tenant and cancel the Notice.

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: February 10, 2020

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Residential Tenancy Branch