



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Cedar Creek Mobile Home Park  
Ltd. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

The tenants filed an Application for Dispute Resolution on December 19, 2019 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One Month Notice”). The matter proceeded by way of a conference call hearing pursuant to section 67(2) of the *Manufactured Home Park Tenancy Act* (the “Act”) on February 25, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenants, their representative, and the landlord attended the hearing and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The landlord confirmed receipt of the Notice of Dispute Resolution on January 8, 2020 via registered mail. This was the package sent by the tenants under cover letter by their representative on December 23, 2019. The package contained the application form, a fact sheet, and all evidence submitted by the tenants with this application for dispute resolution. These documents did not form part of the documentary evidence of the tenants for this hearing; however, the representative for the tenants spoke to the matters at hand during the conference call hearing.

### Issue(s) to be Decided

Are the tenants entitled to an order that the landlord cancel or withdraw the One Month Notice to End Tenancy for cause?

If unsuccessful in this application, is the landlord entitled to an Order of Possession of the rental unit?

Are the tenants entitled to recover the filing fee for this application pursuant to section 65 of the *Act*?

### Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

In the hearing the landlord spoke to the existing tenancy agreement, signed on May 28, 2013. At the time of the signing of the tenancy agreement, the rent amount was \$370.00, paid monthly and due on the 1<sup>st</sup> of each month, with the tenancy commencing on June 1, 2013. The tenants confirmed these details of the agreement.

The landlord submitted the following relevant materials:

- A letter dated February 6, 2020 from the tenant's representative confirming delivery of the landlord's evidence to them.
- The letter from the tenants' representative to the landlord dated December 23, 2019, enclosing all documentary evidence the tenants intend to rely on in this hearing.
- A copy of the One Month Notice dated December 18, 2019, for "Park rule #5Pets Tenants are required to clean up after their pets "at all times in all areas"" as specified on page 2. This One Month Notice states that the tenants had ten days from the date of service to apply for dispute resolution, or the tenancy would end on the effective date indicated on the One Month Notice, January 31, 2020. The One Month Notice indicates this document was served on the door or mail box or the rental unit on December 18, 2019.
- The landlord's note that he delivered the One Month Notice on December 18, 2019, with reference to the tenancy agreement provision for a tenant keeping a pet on the rental unit property.
- The Notice of Infraction dated October 14, 2019, to the individual rental unit address. This Notice lists the following causes: refuse/litter accumulation; pet excrement; unattended pet; and "complaints from neighbours dog not being cared for, yard messy."
- A January 10, 2020 note from the park owners describing their observations on the visit of June 15, 2019. This was "an extraordinary amount of dog feces and a very pungent and unacceptable smell".
- Three photos depicting what was found on the ground by the neighbouring rental unit occupants. This was attached to printed emails from the neighbour to the property manager.

- The Manufactured Home Park Rules and Regulations (the “Rules”), with highlighted sections under the subheading of ‘Pets’. This includes an undated signed list of rules numbered 2 – 10, covering pets.

The landlord indicated the following reasons to end tenancy, on page 2 of the One Month Notice:

- ☐ Tenant or a person permitted on the property by the tenant has:
  - ☐ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
  - ☐ put the landlord’s property at significant risk.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - ☐ adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.
- ☐ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the hearing, the landlord and tenants mutually agreed that the indicated ground regarding illegal activity was not applicable to the situation in dispute.

The landlord gave oral testimony in the hearing. They addressed the provisions of the tenancy agreement and Rules regarding pets. The landlord stated the tenants never applied to have a pet, which is a requirement of the tenancy agreement. Neighbours have complained about clean-up after the pet. The “major concern” the landlord described in the hearing was that of the neighbour’s concern over pet clean-up. With reference to specific terms of the rules, the landlord stated there was no written agreement to keep a pet, the dog is “over 25 lbs.”, and there is no surety on whether the dog is neutered or not. The landlord also specified that a copy of the Rules is provided to every tenant when they enter and sign a tenancy agreement.

In addition to the evidence provided by the landlord, the tenants provided a statement from an adjacent unit occupant. This provides that “Their yard . . . is maintained as best as possible” in comparison to other units. This occupant has observed the tenants cleaning up after their pet.

The tenants, via their representative, spoke to several points on what the landlord provided in evidence, the situation, and made points in rebuttal to the landlord’s oral testimony. I summarize the submissions by sorting them as follows:

- No material breach of tenancy agreement or Rules: The Rules are not part of the tenancy agreement. These rules were amended in 2016, with the existing tenancy agreement between the landlord and tenants in place since 2013. The tenants were

never provided with a copy of the Rules in 2013 and received no copy of the 2016 amended rules. With reference to Residential Policy Guideline 8 'Unconscionable and Material Terms', the tenants have not breached the agreement: there are lots of dogs in the park; the landlord knew about this particular tenants' dog for seven years; there are a number of dogs present that are over 25 pounds in weight.

- Prior notices: The landlord had not provided notice that there was a concern prior to issuing the One Month Notice. With reference to the October 14, 2019 'Notice of Infraction', there was no further evidence that the tenants had not complied with this notice after this date. This stands as the only single warning on this issue. A following letter dated January 10, 2020 concerns "Dog excrement at site #23"; however, the tenants reside at unit 3B. These documents should not be given any weight, and there is no evidence of a subsequent inspection with corresponding notice.
- Manufactured Home Park Tenancy Regulations (the "Regulations"): With reference to the tenancy agreement signed in 2013, and the Rules revised in 2016, there was no notice to the tenants in writing "at least two weeks" prior to a rule becoming effective, as per s. 29(2). By s. 30(3), a rule is enforceable only where it "applies to all tenants in a fair manner". The presence of other dogs in the park does not line up with the presence of specific points in the Rules; therefore, the Rules violate provisions of the Regulations.

### Analysis

Section 40(1)(c)(ii) of the *Act* allows the landlord to end a tenancy because the tenant or a person permitted on the residential property by the tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant or put the landlord's property at significant risk.

Section 40(1)(g) provides that a landlord may end a tenancy by giving a One Month Notice if the tenant has failed to comply with a material term of the tenancy agreement, and not corrected the situation within a reasonable amount of time.

In the matter before me, the landlord has the onus to prove that the reason for ending the tenancy is valid and sufficient.

Based on the evidence and testimony before me, I find that, given the manner in which the Notice of an infraction to the Rules was given, the specific portions of the Rules are not material terms to the tenancy agreement. My reasons for this finding are as follows:

- The 'Notice of Infraction' dated October 14, 2019 includes the clause "A number of these "Notices of Infractions" could result in an Eviction Notice." There is no evidence, and the landlord did not provide oral testimony thereof, that there were follow-up notices, and no indication whether the problem was corrected or further monitored prior to the landlord issuing the One Month Notice. This is a single warning. Similarly, there is no record that the tenant did not comply with this notice. Additionally, this notice does not specify a distinct clause in the Rules, hampering the tenants' ability to identify and rectify the concern.
- The document dated January 10, 2020 refers to site #23. As submitted during the hearing, the tenants reside at unit B3. Moreover, the letter itself is dated January 10, 2020, and refers to an annual inspection undertaken by owners of the park in June 2019, some six months prior. There is no addressee for this document, and the purpose of the creation of this document six months after the annual inspection is not known. There is neither evidence of further inspections, nor that which shows the tenants were aware of the findings of this annual inspection.
- A neighbour provided photos of invasive dog droppings, as occurring near the property line, this in a document dated September 8, 2019. I cannot identify whether this evidence was provided to the tenants prior to the issuance of the One Month Notice.
- The tenancy agreement section 7, regarding pets, makes no mention of the Park Rules regarding pets; that is, the weight restriction and need for landlord permission. Section 14 of the tenancy agreement contains additional terms; however, there is no number of pages attached as what is term 'addendum'. I make this observation with consideration of the tenants' submission that the enclosed rules, as amended in June 2016, were not made available and not specifically noted to be attached to the tenancy agreement that was signed in 2013.
- The landlord submitted 8 pages of Rules and Regulations, as amended June 4, 2018. The header page which does not form part of the 8 full pages states: "Park rules and regulations are included as part of the tenancy agreement and once signed form a binding agreement between the tenant and the landlord. A page of the enclosed material lists rules 2 through 10, all concerning pets. Clause 10 refers to "this Pet Agreement". The landlord did not specifically refer to this document in the review. This page is also undated, and there is no evidence or testimony on who signed as tenant on this random page – the signature does not match that which appears on the final page of the tenancy agreement. As such, this single page does not constitute evidence that there was a set of rules in place specific to pets.
- With reference to the *Regulations* section 30(3) where ". . . the [enforceable] rule applies to all tenants in a fair manner", there is documentary evidence and submissions by the tenants that there are other dogs as pets in the park. The landlord did not address this evidence in the hearing, and the lack of reference to other tenants in the

park, while marginally relevant, detract from the weight of the evidence concerning the enforceability of the Rules.

I find this is a disagreement between neighbours regarding invasive dog droppings. This is not a matter that violates the tenancy agreement to a degree that constitutes a breach of a material term. As provided for in the Residential Policy Guideline 8 'Unconscionable and Material Terms', which gives a statement of the policy intent of the *Act*, a material term is one which both parties agree is so important that "the most trivial breach of that term gives the other party the right to end the agreement."

The lack of firm evidence to show the tenants had requisite knowledge of the revised 2016 Rules detracts from the ability of the landlord to enforce said Rules. In these circumstances, I find the Rules, as presented, are not material terms of the tenancy agreement; therefore, I cannot regard the infraction as a fundamental breach giving one party the right to end the agreement.

### Conclusion

The tenant's application to cancel the One Month Notice dated December 18, 2019 is successful. The tenancy will continue in accordance with the *Act*.

As the tenant was successful in this application, I find the tenant is entitled to recover the \$100.00 filing fee paid for this application. I authorize the tenants to withhold the amount of \$100.00 from one future pad rent payment.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: March 6, 2020

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Residential Tenancy Branch