



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNC OLC FFT OT

### **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;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 55; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 65.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified, and the landlord confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package. The landlord testified, and the tenant confirmed, that the landlord served the tenant with their evidence package. I find that all parties have been served with the required documents in accordance with the Act.

### **Preliminary Issue – Notice to End Tenancy**

The landlord issued the Notice due to the tenant constructing an unauthorized tent structure to house his truck (the "**Tent**") on the manufactured home site (the "**Site**"). At the outset of the hearing, the landlord testified that the tenant has taken down the Tent. As such, she testified that she agreed to cancel the Notice.

The remaining issue to be determined is whether the landlord has breached the Act or the tenancy agreement by prohibiting the tenant from setting up the Tent on the manufactured home site.

I will address this issue in the balance of the decision.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) an order that the landlord comply with the Act or tenancy agreement, specifically to not prevent him from constructing the Tent on the manufactured home site; and
- 2) recover his filing fee?

### **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 tenancy agreement starting March 10, 2009. Monthly rent is \$423.

The tenant testified that he wanted to construct the Tent on the Site. He testified that he spoke with the park manager, who verbally told him that he could have a Tent on the Site. The tenant's son then purchased the Tent for the tenant, and the tenant set it up.

On January 6, 2020, the landlord served the tenant with a Notice of Infraction for violating park rules by setting up the Tent.

On February 28, 2020, the tenant took down the Tent.

The Landlord entered into evidence a copy of the Park Regulations, which include the following clause:

1. Manufactured home and site shall be attractively maintained by the Tenant and shall comply with all applicable laws, ordinances and regulations of the Province, District, and Municipality. Any external additions or alterations to the manufactured home require a building permit and the written permission of the Landlord before commencement of any work. No alterations or changes by the Tenant to the Site's ground level are permitted.

(the "**Site Clause**")

The landlord argued that this clause permits her to prohibit the construction of the Tent on the Site. She submitted that structures like the tent eventually degrade over the time and become an eyesore. She testified that, on this basis, she does not permit any such structures to be erected permanently, as they will eventually degrade and become unattractive. She does, however, grant permission for such structures to be set up on a temporary basis.

She testified that tenants are given permission to build more solid structures to house their vehicles.

The landlord denied that the manager gave permission to the tenant to set up the Tent, and that, even if he did, the permission was not in writing.

The tenant produced photographs of the Tent, which appears to not yet have deteriorated. He argued that the verbal authorization to set up the Tent should be sufficient to allow him to have the Tent on the Site, and that his son would not have purchased the Tent without the verbal authorization of the manager.

## **Analysis**

Sections 32 of the Act states:

### **Park rules**

32 (1) In accordance with the regulations, a park committee, or, if there is no park committee, the landlord may establish, change or repeal rules for governing the operation of the manufactured home park.

(2) Rules referred to in subsection (1) must not be inconsistent with this Act or the regulations or any other enactment that applies to a manufactured home park.

(3) Rules established in accordance with this section apply in the manufactured home park of the park committee or landlord, as applicable.

(4) If a park rule established under this section is inconsistent or conflicts with a term in a tenancy agreement that was entered into before the rule was established, the park rule prevails to the extent of the inconsistency or conflict.

I find that the Park Regulations constitute “rules” for the purposes of this section.

I am unaware of any portion of the Act which gives the tenant a right to construct a tent or other structure on the Site. As such, I find that the Site Clause does not contravene the Act.

As such, I must determine if the Site Clause prohibits the tenant from erecting the Tent.

The Site Clause requires that the tenant obtain the landlord’s written permission for “any external additions or alterations to the manufactured home”.

The Tent is a free-standing structure. It is not an addition to the manufactured home, nor does it alter the manufactured home. I note that this portion of the Site Clause does not prohibit alterations to the manufacture home *site*, rather only the manufactured *home* itself. Accordingly, I find that this portion of the Site Clause does not apply to free

standing structure located on the Site that are not attached to or altering the manufacture home itself.

The Site Clause also prohibits “alterations or changes by the Tenant to the Site’s ground level”. Neither party made submissions as to how this portion of the Site Clause should be interpreted. However, I understand it to mean the ground of the site may not be altered. I understand this portion of the Site Clause to prohibit a tenant from excavating or digging on the Site.

I do not understand this portion of the Site Clause to prohibit a tenant from placing a free-standing structure, that does not require any excavation of the ground, on the Site. I do not find that this portion of the Site Clause prohibits the tenant from erecting the Tent, as the ground itself is not altered or changed when setting up the Tent.

I understand that the landlord’s objection to the tenant erecting the Tent on the Site is that the Tent will invariably degrade over time and will eventually become an eyesore. This is a legitimate concern. However, the Site Clause does not authorize the landlord from prohibiting the Tent on the basis that it will *become* an eyesore. Rather, the Site Clause requires the tenant to attractively maintain the Site. If the tenant fails to do this by permitting the Tent to degrade and becoming an eyesore, the tenant would then be in breach of the Site Clause, and the landlord would be entitled to demand that he take down the Tent. He would not, however, be in breach of the Site Clause before this time.

I find that the landlord did not have any basis under the Act or the Park Regulations to demand the tenant take down the Tent. I find that the Tent is not an addition or alteration to the manufactured home (it is, rather, a freestanding structure), and the tenant did not alter or change the ground level of the Site by erecting the Tent, as the tent sits atop the ground.

I find that the Tent, at this point in time, does not cause the Site to cease being “attractively maintained”.

As such, I order that the landlord not prohibit the tenant from setting up the Tent on the Site. I caution the tenant that, as time passes, the Tent may degrade to the point where it causes the Site to no longer be “attractively maintained” and this may cause the tenant to be in breach of the Site Clause. At such time, the landlord would be permitted to demand that the tenant either repair or take down the Tent.

I note, based on the landlord’s testimony and the fact that the landlord permits tents to be set up on a temporary basis, that the mere presence of the Tent will not cause the Site to cease being “attractively maintained”. Rather, it is the condition of the Tent itself that would cause this to be so.

## **Conclusion**

Pursuant to section 55 of the Act, I find that the landlord failed to properly apply to the Park Regulations to the tenant. I order that the landlord not prohibit the tenant from setting up the Tent on the Site. The landlord may demand the tenant take down the Tent at such time that it causes the Site to cease being attractively maintained. The tenant is permitted to set the Tent up on the Site until such time that it degrades to such a condition that it causes the Site to cease being "attractively maintained".

Pursuant to section 65(1) of the Act, as the tenant has been successful in his application, he is entitled to the return of the filing fee. Pursuant to section 65(2) of the Act, the tenant may deduct \$100 from one future rent payment in satisfaction of this amount.

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

Dated: May 1, 2020

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Residential Tenancy Branch