



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding #151 Cathedral Ventures Ltd.  
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 a 1 Month Notice to End Tenancy for Cause pursuant to section 40;
- An order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 55; and
- Authorization to recover the filing fee from the landlord pursuant to section 65.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The corporate landlord was represented by its agent (the "landlord").

As both parties were present service was confirmed. The parties each confirmed receipt of the materials. Based on the testimonies I find that each party was duly served with the respective materials in accordance with sections 88 and 89 of the Act.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Are the tenants entitled to recover the filing fee from the landlord?

### Background and Evidence

This periodic tenancy began in 2003. The current monthly pad rent is \$414.08 payable on the first of each month.

The landlord issued a 1 Month Notice to End Tenancy dated September 14, 2020 which the tenant confirmed they received. The reasons provided on the notice for the tenancy to end are:

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

*Tenant has assigned or sublet the rental unit/site without landlord's written consent.*

The landlord submits that the tenant does not live or occupy the dispute site. The landlord testified that they believe that the site was previously occupied by the tenant's son and now is vacant. The landlord said that they believed that the tenant occupied another site in the park previously but has no information as to where they now reside. The landlord provided no documentary evidence in support of their submissions.

The tenant testified that they have been residing at the dispute site at all material times. The tenant explained that their adult son stayed in the site for a time while undergoing medical procedures nearby but the site was never subleased or assigned.

The tenant submits that the landlord has issued a number of earlier Notices to End Tenancy which they have applied to dispute under the file numbers on the first page of this decision. The tenant says that they are seeking an order for compliance to dispute the present 1 Month Notice.

### Analysis

Section 40(4) 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that there has been a breach of a material term of the tenancy agreement or that the tenant has subleased or assigned the rental pad without the landlord's authorization.

Based on the evidence, I find that the landlord has not met their evidentiary burden on a balance of probabilities to show that there is a basis for this tenancy to end.

The landlord alleges that the rental unit was subleased or assigned but their evidence consists of conjecture and disputed testimony. The landlord submitted no documentary evidence in support of their position and gave no testimony as what portion of the tenancy agreement they believe was breached by the tenant. I find the landlord's submission that the manufactured home has been subleased or assigned without authorization to not be supported in any materials and their belief that the tenant is not residing on the pad and the manufactured home lies empty to have no air of reality. Given the paucity of the landlord's evidence I find that the landlord has not met their evidentiary burden that there is any basis for a Notice to End Tenancy to be issued. Accordingly, I allow the tenants' application to cancel the notice.

As the tenants were successful in their application they are entitled to recover the filing fee from the landlord. As this tenancy is continuing, the tenants may satisfy this monetary award by making a one-time deduction of \$100.00 from the next scheduled rent payment.

### Conclusion

The tenants' application to cancel the 1 Month Notice is granted. The notice is of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenant is authorized to make a one-time deduction of \$100.00 from their next scheduled 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 *Manufactured Home Park Tenancy Act*.

Dated: November 23, 2020

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Residential Tenancy Branch