



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNE, AS

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Manufactured Home Park Tenancy Act* ("Act") to cancel a One Month Notice to End Tenancy for Cause dated August 19, 2020 ("One Month Notice"), and for an order to allow an assignment or sublet when permission has been unreasonably denied.

The Tenant and the Landlord appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application, and the Parties confirmed these in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Prior to the Parties' testifying, I advised them that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which is the application to set aside a One Month Notice. I find that not all the claims on the

Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request to set aside the One Month Notice at this proceeding. Therefore, the Tenant's other claim is dismissed, with leave to re-apply, depending on the outcome of this hearing.

When a tenant applies to cancel a notice to end tenancy issued by a landlord, section 48 of the Act requires that I consider whether the landlord is entitled to an order of possession. This is the case if I dismiss the application, and if the notice to end tenancy that is compliant with section 52 of the Act, as to form and content.

#### Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

#### Background and Evidence

The Parties agreed that the periodic tenancy began on June 1 2010, with a current monthly pad rent of \$525.00, due on the first day of each month.

The Tenant submitted a copy of the One Month Notice, which was signed and dated August 19, 2020, it has the rental unit address. It was served in person on August 19, 2020, with an effective vacancy date of September 19, 2020, which is automatically corrected to September 30, 2020, by section 46 of the Act.

The grounds checked on the One Month Notice indicated that it was served on the following bases:

- the Tenant has allowed an unreasonable number of occupants in the unit/site;
- the Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- the Tenant has not done required repairs or damage to the unit/site/property/park; and
- the Tenant has assigned or sublet the rental unit/site/property/park without the Landlord's written consent.

The Parties explained that the Tenant moved out of the Manufactured Home Park ON May 1, 2020, because of health reasons. However, the Tenant's son moved into the manufactured home without the Landlord's permission.

The Landlord said:

We were not aware when she had left the park; we were told by her neighbour. Her son had been there previously when she was there, and Tenant knows he causes issue. I said: 'You know full well your son causes issues in the park.' I had left her a message that if you have left, you are not allowed to sublet, and your son isn't allowed to be here.

The yard is an absolute mess, worse since her son has resided in the home. We constantly get phone calls that there are people coming in and out all the time. There are at least 5 – 10 people outside or inside the trailer.

You can't see the lawn; it's full of garbage tires, we've tried to talk to [the Tenant's son].... She is subletting to him and we were not told; we both know he causes issues.

And the stage of the yard, and now it's all covered in snow. It's unacceptable, according to the rental agreement – it says right in there that you can't sublet. The home registry says you can't sublet. We are not providing consent for him to live in the home, because of said issues. We are constantly getting calls and I know [the Tenant] sees the other side of it. Things aren't being done and she's now late on the pad rent, which she hasn't been until now. He isn't allowed in the park. We have a hearing in January regarding the same thing. It's just that . . . [the Tenant] said she doesn't have money to get the trailer. He has to leave, and we can work to find a different renter. The yard is absolutely a mess; it looks like a junk yard. I'm not trying to be mean or callous, it's very frustrating that nothing gets done. [The Tenant] left for her own reasons, but we would not have given written consent to allow Matthew to live there.

I finally managed to get hold of her and I said 'we realize you've left and let Matthew stay there, for which we have not given permission'. She said she didn't get that message, but I know I left her a voicemail message.

She's on the rental agreement not him.

The one we have was signed on May 1, 2010. It is in our package for January. But the MH Registry manual states that she needs written consent to sublet.

The Tenant said:

[The Landlord] is right, there is a lot of issues. I am working on trying to get [my son] out of there, but it's not an easy job. As far as the yard clean up, my other children have said they will help me get that stuff out of there after [my son] is gone. I will then sell the trailer.

[My son] has a drug problem. I know he has friends coming and going. I just wish the next-door neighbour would have come over and said something when the music was bothering him. He threw cans of soup at my trailer one time, and put damage on the side. The mess - I totally agree with [the Landlord]. My issue is getting him out of there. I am looking for a new place for him. He was living with me for a couple years. He's been in and out of jail.

I never even thought it was an issue as far as subletting

The Landlord submitted a copy of an email she received from another Park tenant who wrote:

October 1, 2020

I've had an ongoing issue for years with Unit [rental unit #], with excessive music at all hours of the day/night. Sometimes the bass is so overwhelming that I can feel it in my floor and goes on for hours at a time. I make complaints all the time to the [Landlord] and on past occasions I have even called the RCMP and the City.

Another issue is last winter they dug up underneath their trailer and placed dirt in my yard and as of now it is still there.

The other day on September 27<sup>th</sup> at 5 am him and other people drove ATV's out of their property at 5am and around the park with no regards for anyone.

I've had time where they drive their vehicles from my driveway across the lawn and into their driveway.

He has tons of foot traffic that come and go from his place that cut across my property, and instances where there has been junk like vehicle tires thrown on to my lawn and people mistaking my place for his looking for illegal substances.

I do not feel safe living beside Unit [rental unit #] and at times there have been

RCMP that were going to that place daily. For the protection of myself and property I have bought Video Security Cameras because of the tenants of Unit [rental unit #].

[L.W.]

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Section 40 of the Act allows a landlord to end a tenancy for cause:

#### **Landlord's notice: cause**

**40** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (a) the tenant is repeatedly late paying the rent;
- (b) there are an unreasonable number of occupants on the manufactured home site;
- (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, or
  - (iii) put the landlord's property at significant risk;

. . .

Based on the documentary evidence and testimony before me for consideration, I find that the Tenant was served in person with the One Month Notice on August 19, 2020.

Section 40(5) of the Act states that if a tenant who has received a One Month Notice does not apply for dispute resolution within 10 days after the date the tenant receives the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and must vacate the rental unit by that date.

The Tenant applied for dispute resolution on September 22, 2020, more than 30 days

after having been served with the One Month Notice. I, therefore, find that she is conclusively presumed under section 40(5) of the Act to have accepted the One Month Notice, and I find that the tenancy, therefore, ended on September 30, 2020.

As a result, I find that the Tenant is overholding the rental unit, and therefore, that the Landlord is entitled to an Order of Possession pursuant to section 48(2)(b) of the Act. As the corrected effective date has passed, the Order of Possession will be effective two days after service on the Tenant.

### Conclusion

The Tenant is unsuccessful in her Application to cancel the One Month Notice, as she failed to apply for dispute resolution within ten days of having been served with the One Month Notice.

Pursuant to section 48 of the Act, I grant an Order of Possession to the Landlord effective **two days after service of this Order** on the Tenant. The Landlord is provided with this Order in the above terms and the Tenant must be served with **this Order** as soon as possible.

Should the Tenant fail to comply with this Order, this Order may be filed in the Supreme Court of British Columbia and enforced as an Order of that Court.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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