



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the Tenant: CNC, FFT
For the Landlord: OPC, OPR, FFT

Introduction

This hearing dealt with cross applications for Dispute Resolution under the *Manufactured Home Park Tenancy Act* ("Act") by the Parties.

The Tenant filed a claim:

- to cancel a One Month Notice to End Tenancy for Cause dated October 17, 2020 ("One Month Notice"); and
- recovery of her \$100.00 Application filing fee.

The Landlord filed a claim for:

- an Order of Possession for Cause, based on the One Month Notice; or
- an Order of Possession for Unpaid Rent of \$700.00 dated October 1, 2020 ("10 Day Notice"); and
- recovery of her \$100.00 Application filing fee.

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 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.

Preliminary Matters

The Tenant provided her email address in her application, and confirmed this address in the hearing. The Landlord said the Decision should be mailed to her and she provided her mailing address in the hearing. The Parties confirmed their understanding that the Decision would be sent both Parties in this manner and any Orders would be sent to the appropriate Party.

The onus to prove their case is on the person making the claim. In most circumstances this is the person applying for dispute resolution. However, in some situations the onus of proof is on the other party. For example, a landlord must prove the reason they wish to end the tenancy when a tenant applies to cancel a Notice to End Tenancy. Accordingly, I find that the burden of proof in these matters is on the Landlord.

Issue(s) to be Decided

- Should the One Month Notice be cancelled or confirmed?
- Should the 10 Day Notice be cancelled or confirmed?
- Is the Landlord entitled to an Order of Possession?
- Is either Party entitled to recovery of the \$100.00 Application filing fee?

Background and Evidence

The Parties agreed that they do not have a written tenancy agreement for the tenancy. They agreed that the periodic tenancy began on May 1, 2020, with a monthly rent of \$700.00, due on the first day of each month. The Parties agreed that the Tenant did not pay a security or pet damage deposit to the Landlord for this tenancy. The Parties agreed that the Landlord collects the rent on the last day in the month before it is due, so that she will have the funds to pay her mortgage on the first of the month. As such, rent for September is due on August 31st, rent for October is due on September 30th, and so on.

ONE MONTH NOTICE

The Landlord submitted a copy of the One Month Notice, which was signed and dated October 17, 2020, it has the rental unit address, it was served in person on September 17, 2020, the effective vacancy date is automatically changed to October 31, 2020, pursuant to section 46 of the Act. The grounds on which the One Month Notice was served are:

- The Tenant or a person permitted on the property by the Tenant has
 - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
 - put the Landlord's property at significant risk; and
- the Tenant knowingly gave false information to prospective tenant(s) or purchaser(s) of the site or park.

The Parties agreed that the Landlord served the Tenant with the One Month Notice on September 17, 2020, although it states on the notice that it was served on October 17, 2020, and has an effective vacancy date of October 17, 2020.

However, section 46 of the Act states that if a party gives the other party a notice to end tenancy with an effective date that does not comply with Division 1, that the notice is deemed to be changed in accordance with subsection (2) of (3), as applicable. As such, I find that the effective date on the One Month Notice was deemed by the Act to be October 31, 2020. I also find that the Tenant was not prejudiced by the One Month Notice having been dated October 17, 2020, rather than September 17, 2020.

The Landlord said she issued the One Month Notice because:

[The Tenant] has five cats, not two. Once she moved in, the first night there was problems. And problems with not getting along with tenants. Running her washing machine and letting the grey water run out on the ground. I gave her two warnings to smarten up, and she just doesn't. She was three weeks late on the rent in October, I have to make the mortgage.

The Tenant replied:

Initially, when I moved into the site by [the Landlord], I did have one dog and two cats. That was fine and dandy. Then a week before I moved up to the RV park, I was sitting outside with [the Landlord] and her boyfriend [R.]. She asked if I was ready to move up to the spot. I had asked about an enclosure for my cats. That's when I informed her that with my previous landlord, I had three cats spayed . . . the previous landlord said to find them a home or they would have to euthanize them. I informed [the Landlord] before I moved up to site #3. She gave approval for an enclosure, as long as it was neat and tidy. The cats are enclosed in a 10 x 10, like a dog run, so they aren't outside to poo everywhere. And they are safe from other wildlife.

As for the washing machine, [the Landlord] talked to me about that. I had misunderstood. I had said the hose was not long enough to run from the washing machine to the septic, and she had said, run it under the trailer. I thought she meant the water could go under the trailer. Rather, she must have thought it a shorter hose length. I apologized and the problem has been rectified.

The Landlord said:

When she moved here, she moved here with the five cats. I did say that she could build a little enclosure, but I thought she was talking about two cats. As you can see from photos, her yard is anything but neat and tidy.

In terms of the implications of five cats versus two cats, the Landlord said:

Nothing, but cat litter and the odor is pretty bad in the summer. The piles of garbage is just ridiculous. You can't be using garbage for constant cat litter. The garbage bags are all over the place with photos.

The Tenant said:

Animal control was called on me in October. I was given a clean bill of health for all my animals.

Garbage bags? Part was my laundry. But some of the garbage was left behind by the pick up. I was using the orange garbage bags. [The Landlord] said this has happened before. You might have to make other arrangements for your garbage, because sometimes the bags are too heavy. I take my garbage to the dump. The bags are always sealed.

Animal control didn't say anything about the odour of my trailer. Again, I self dispose of my garbage and pay for it, when there is a service I could use, but I don't want to upset [the Landlord] any more than she has been.

The Landlord said:

We all know there's rules with garbage cans. We're allowed three garbage cans, so if there is more than three garbage cans, it doesn't get taken. If [the Tenant] says she takes her garbage to the dump, how can she explain the mattress under her trailer? It's been there forever, and there are also bags left now. She

has a friend with a truck quite regularly – took chairs and stuff away - and that's the only time she went to the dump.

The Tenant said:

I actually left [the Landlord] a voicemail about five days ago. I do have bags out there, but a small portion of it is garbage. I've been going through clothes and shoes. My friend is coming back on Wednesday with his truck. I have too many things, and I have to get rid of stuff - clothing wise. It does cost me money to have the garbage taken away, maybe once or twice a month. My friend lives in Nanaimo. It costs gas money and then I have to pay the dumping fee. There are three garbage cans for 12 people .

The Landlord said:

For the garbage, she has so much garbage, because a lot of it was cat litter. Why not take it in for donations, when they've been sitting outside forever? Her friend's leaving it outside in the pouring down rain. It's not destroyed by the rain?

When asked about storing the bags inside her trailer, the Tenant said:

Again, the majority is donations, and trailers are not that roomy. Those bags are completely sealed, so they're not going to get damp. They are double bagged for that reason. My friend is coming to pick me up on Wednesday. I didn't get rid of them right away, because I have been bringing out more stuff. It could even be gone tomorrow. He was going to come by today, but we're having this conversation.

What I will do to keep everybody happy is to arrange to go to the dump weekly or biweekly. I have maybe two bags a week. I have no problem with that to keep everything on an even keel.

The Landlord said:

I think it can't happen; her site has been that way all the time. Everything goes in the garbage, but there is recycling that she hasn't used. She says that she gets two black garbage bags a week, which is a little excessive. It looks full to me.

The Tenant said:

Again, part of the bags underneath the front part of my trailer, my washing machine is there. Some of those are laundry bags, and my recycling, there has been enough tenants who have seen me take my recycling down. Since things have been negative, it's been harder for me to walk down there, because I don't want confrontation for the little bit of cardboard I recycle. I can take stuff to the recycling bin at the dump. I had no idea that we . . . I'll get rid of everything myself to avoid bad blood.

When asked about other matters, the Tenant said:

A letter was submitted into evidence from one of the tenants, [B.L.], dated October 5; it has everybody's names and phone numbers. When I received this, it was October 31, and the majority of tenants didn't give their permission for [B.] to represent them, nor to have their numbers on this list. Why [B.], who was the instigator? We had issues back in June, which are ongoing, even though [B.] and I shook hands, and these issues were resolved. The majority of these tenants never gave permission for [B.] to speak on their behalf or have their names to be put on this letter.

The Landlord said:

All the renters are complaining on all kinds of things. They got together and agreed on this. They told me themselves. They wrote the letter out and everybody got their facts in there. They gave me a copy of it. That's the problem. She's got all my tenants in an uproar.

The Tenant said:

So the letter is dated for Oct 5, when I received it on Oct 31, I immediately spoke to [B. and D.] next door, they had no idea that [B.] had written this letter. Another tenant, [L.], said he had not given permission. There's another person, but I don't feel comfortable giving their names . . .

The Landlord submitted a copy of this letter dated October 5, 2020 that was addressed to her and had the names of the other tenants of the other five sites. It states:

From: RV Park Residents
(compiled by [B.L.])
[B.L.'s signature]

Re: [the Tenant Eviction]

Summary

[The Tenant's] conduct during her tenancy has created an ongoing series of lies, and her conduct has been considered unacceptable by the residents.

Her eviction is considered essential by the tenant's. Daily conduct is offensive to all, and she is incapable of telling the truth.

<u>Tennant List</u>	<u>Tenant site</u>	<u>Contact Info</u>
[B.L.]	1	[telephone number]
[B & D.T.]	2	[telephone number]
[Tenant]	3	EVICTED
[L.O.]	4	[telephone number]
[J. & P.C.]	5	[telephone number]
[G.L.]	6	[telephone number]

[Tenant's] Conduct/Behaviour

Our RV Park is a small intimate community with only 6 sites, mostly retirees. Within 1 week, [the Tenant] created an uncomfortable environment with an ongoing web of lies and unacceptable conduct. Typical examples of our concerns are, in no order of significance, as follows:

- Told everyone she was a lesbian and even went so far as to "hit" on a friend.
- Having just met her, she described an event where her friend got her tongue stuck in her nipple ring.
- [The Tenant] was constantly intrusive by barging into neighbours property without being invited.
- Drinking in public with an alcoholic tenant. When she was asked to stop, she refused.
- Told by the Park that she has 2 cats. She actually has 5 cats and a sick dog. She lied to get a site.
- Her RV has no propane of sewage discharge. There is a strong urine smell both inside and out.
- Claimed that a neighbour left a trailer and washroom filthy. That was untrue. She seems to think she can do whatever she wants: some examples of typical conduct

- grabbed a neighbours pup, hurt it and refused to let it go.
- cut off pieces of a neighbours aloe plant without permission.
- Cut pieces of fur from a neighbours dog without permission.

Could continue with a lot more, foregoing is just typical of her ongoing conduct.

[reproduced as written]

10 DAY NOTICE

The Landlord submitted a copy of the 10 Day Notice, which was signed and dated October 1, 2020, has the rental unit address, was served in person on October 1, 2020, the effective vacancy date was October 11, 2020. The Landlord said it was served, because the Tenant failed to pay \$700.00 in rent that was owing on September 30, 2020.

When asked why I should confirm the 10 Day Notice, the Landlord said:

I don't need issues with rent. I have a mortgage to pay. This relates to October's rent, which she paid on October 10th.

The Tenant said:

When I received that [One Month Notice], I had gone back to the [town] office and wanted to pay my rent directly into the tribunal, until the first Notice was dealt with. As [the Landlord] does not have an email address, I was told by the young lady that she would receive a package via mail; however, I had an expedited hearing that I cancelled, and I gave the money to [the Landlord] directly. I apologized and I told her that it was a low thing of me to do, but with everything that had gone on I was frustrated. It was retaliatory.

I have been looking at other RV parks, and I am on multiple waiting lists. No one wants to leave or travel, with the pandemic. It makes it tough for me to leave here. I have kept [the Landlord] up to date re potential RV parks, I'm making every effort very diligently. But it is a waiting game to find a suitable place.

The Landlord said:

She knows the rules; the rent's got to be paid. I have bills and mortgages to pay, and she was angry and didn't want to give me the rent. She gave me the letter

you have, but the RTB said they don't do that. And what do I do for those ten days? She did do it out of anger. I can't tolerate that when she gets in a mood. I have bills. When rent is due, rent is due. We already went to the rental board and we had it all worked out. It was just a part of a game.

The Tenant said:

I do know there are ways to pay your rent to the [RTB]. It states it in the rules that you can, and yes, I admitted that I did do that out of anger and frustration, but until I can find a place to go to, I will pay my rent before the end of the month. She will have the money in hand until I can find a place to go. She has my word on that. I will not screw around with her anymore. I felt that I was not being listened to.

The Landlord said:

She said she's been looking everywhere; well I told her the one across the street had an opening up, as my friend passed away. So, she can't say she is constantly looking. I can't let her get away with everything she has been doing. I have to keep my park happy.

The Tenant said:

Yes, [the Landlord] did tell me about [the other RV park]. I did call the owner and he said he did not have any long-term spots. And the rent was higher than I can afford. I have multiple health issues. I'm legally blind, so I want to ensure it is an easy place for me to get around. I do not say it as an excuse, but it is pertinent to my situation. Again, I have checked out multiple spots, but you are put on a waiting list. One place was only good for a month. I've kept my head down and I've kept to myself. The neighbours say hi to me as well as [B.]. I'm doing the best I can to make everything go according to plan.

The Landlord said:

She says she's keeping her head down? That's not true. She's not getting along with the renters. This used to be a nice quiet place to live and I'd like it back that way.

The Tenant said:

Two of my very good friends moved in next door. We're very sociable, and if I was such a rotten neighbour and tenant, why are people still being sociable with me? I'd ignore a rotten neighbour. Even [G., the handyman]; he says hello and waves back. And even with [B.], he says hi, and I say hi, and we wave to each other if he's driving by. So, I'm not that much of a horrible person. I will be happy to go when a spot comes open. I thought we were all good and done. I would like to be left alone until I have found a safe place to go.

The Landlord submitted a copy of a handwritten letter dated October 1, 2020 from another tenant in the RV park. It states:

I have lived at site #6 in [the Landlord's] RV Park for the last five years. The first night [the Tenant] moved in she had a screaming argument with a visiting drinking friend. This was very disturbing because everyone is retired and lives a very quiet lifestyle. She has been obnoxious and crude in her conversations. I warned her about not dumping the grey water from her washing machine on the ground. She did not fix it until [the Landlord] made her connect it to the septic system.

[G.T.L., signature, telephone number]

[reproduced as written]

Analysis

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

The onus to prove their case is usually on the person making the claim. However, a landlord must prove the reason they wish to end the tenancy when a tenant applies to cancel a Notice to End Tenancy. As a result, I find that both of these applications must be decided based on the Landlord's burden of proof on a balance of probabilities.

ONE MONTH NOTICE

Section 47 of the Act allows the landlord to end a tenancy for cause:

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

. . .

(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;

. . .

In this case, the Landlord alleged that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. The Landlord pointed to:

- The number of cats on the premises, contrary to what the Tenant had told the Landlord prior to moving in;
- Multiple garbage bags stored outside the Tenant's trailer;
- Allowing the washing machine grey water to flow onto the site; and
- A miscellany of actions about which the other tenants have complained.

I find that the Tenant had an excuse or an admission with an apology for the behaviours complained of by the Landlord and the other tenants. However, based on the evidence before me overall, I find that the Landlord has provided sufficient evidence to support the validity of the One Month Notice. I also find that the One Month Notice is consistent with section 45 of the Act, as to form and content. I, therefore, confirm the One Month Notice and declare that the tenancy has come to an end.

Pursuant to section 48 of the Act, I find that the Landlord is eligible for an order of possession, and I award the Landlord an Order of Possession **effective two days after it is deemed served** on the Tenant, pursuant to section 83, since the vacancy effective date of the One Month Notice has passed. Given her success, the Landlord is also awarded recovery of the \$100.00 application filing fee, pursuant to section 65 of the Act. I, therefore, award the Landlord a Monetary Order from the Tenant of \$100.00.

Given the outcome of the One Month Notice, I find that it is not necessary to consider the validity of the 10 Day Notice; therefore, this claim is dismissed without leave to reapply.

Conclusion

The Tenant is unsuccessful in her Application to cancel the One Month Notice, and the Landlord is successful in her application for an Order of Possession for cause. I dismiss the Tenant's Application wholly, as I find that the One Month Notice is valid as to form and content, pursuant to section 45 of the Act.

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.

I grant the Landlord a Monetary Order under sections 60 and 65 of the Act from the Tenant in the amount of **\$100.00**.

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 *Residential Tenancy Act*.

Dated: November 24, 2020

Residential Tenancy Branch