



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNC FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the "**Act**") to cancel the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 40 and to recover the filing fee pursuant to section 65.

The tenant ("**NK**") attended the hearing. WS (the individual identified as the landlord on the application and property manager of the manufactured home park) attended the hearing. The owner of the manufactured home park ("**AT**") also attended the hearing.

NK testified that she served WS with the notice of dispute resolution form and supporting evidence package. WS confirmed receipt but indicated that it was lost in the mail and was not received until roughly 20 days after it was sent (which I note was still over a month before this hearing). WS testified, and NK confirmed, that he served NK with the landlord's evidence package. I find that all parties have been served with the required documents in accordance with the Act.

### **Preliminary Issue – Identity of Landlord**

At the hearing, the parties agreed that WS was not the landlord, but rather the property manager. The landlord is a corporate entity (full name on the cover of this decision) and AT is its owner.

As such, and by consent of the parties, I ordered that the application be amended to remove WS as a respondent and replace it with the corporate landlord (hereinafter referred to as the "**landlord**").

### **Issues to be Decided**

Is the tenant entitled to:

- 1) an order cancelling the Notice;
- 2) recover the 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 genesis of this dispute lays in the circumstances by which the manufactured home park site (the "**site**" of the "**pad**") were rented to NK's family. The parties never properly documented the arrangements made, and this has led to much confusion.

NK testified that her mother rented the site from the prior owner of the manufactured home park (the "**park**") starting in early 2014. At that time, NK's mother also entered into a separate agreement (the "**rent-to-own agreement**") with the prior owner of the park to purchase a manufactured home (the "**manufactured home**") which is located on the pad.

NK's mother resided in the manufactured home until March 2016. NK testified that her health was failing, and she removed to another city to be closer to her family. At some point between 2014 and 2016 the landlord purchased the park from the prior owner. The landlord took over the prior owner's tenancy agreements for the occupants of the park. It did not take over the prior owner's role in the rent-to-own agreement.

NK testified that when her mother moved away, NK's son (**JE**) moved into the manufactured home. She testified that she and JE obtained the landlord's permission (given by WS) for this to occur. She testified that this permission was required because the park does not allow sites to be sublet. The landlord's representatives did not disagree with this statement.

NK testified that her mother continued to pay the prior owner pursuant to the rent-to-own agreement until the manufactured home was fully paid off in November 2019. She testified that her son assumed responsibility for paying monthly rent for the site. She testified that the landlord wanted all payments to be made via e-transfer, so JE paid her and then she transferred the monthly rent to the landlord.

NK has two other sons who reside in the park on different manufactured home sites and for whom she provides a similar service. NK does not live in the park.

The landlord submitted copies of e-transfer receipts from the tenant showing monthly payments of \$864 from NK. NK did not testify what this represented, but I note that it is exactly three times the amount of month rent for the site (which is \$288, per a receipt entered into evidence by NK dated December 1, 2020).

NK testified that JE also made payments to her mother (JE's grandmother) for use of the manufactured home. Specific details of this arrangement were not provided, but NK testified that these payments gave JE an ownership interest in the manufactured home, and that as a result of these payments, when the manufactured home was fully paid off

pursuant to the rent-to-own agreement, title of the manufactured home was transferred to JE. This was done in November 2019.

AT and WS both acknowledged that after NK's mother moved out of the park, they knew that JE would be moving onto the site and staying in the manufactured home. AT acknowledged that they did not draw up a new tenancy agreement clarifying who was going to be the tenant at this time. AT and WS testified that, as NK was paying monthly rent for use of the site, they considered her to be the tenant and not JE. However, WS testified that "we don't care who pays rent as long as it gets paid". WS also provided testimony wherein he assigned responsibility for payment of the site rent to the owner of the manufactured home.

WS testified that following NK's mother's departure from the park and after JE moved onto the site, he invited JE and NK's other sons to sign some "paperwork". He clarified that the "paperwork" he sought to have addressed was an acknowledgement of their assumption of ownership of their respective manufactured homes located on their respective sites. He explicitly testified that he did not invite JE to sign any documents relating to the rental of the site or assumption of NK's mother's tenancy agreement. His testimony made it clear that, in his mind, the owner of the manufactured home is responsible for paying monthly rent for the site.

WS testified that only one of NK's sons signed "paperwork" indicating that they were owners of their respective manufactured home when he asked. He testified that JE did not do this until December 2020, after NK had been served with the Notice.

NK testified that when JE attended WS's office in December 2020, he paid December's rent (\$288) in cash. The landlord issued a receipt for this payment, which incorrectly lists the payee as "NE" (standing for the first name of NK and the last name of JE).

Contrary to WS, AT testified that he understood that the status of ownership of the manufactured home has no bearing on who is responsible to pay rent for the site. He reiterated that he had understood that in the absence of a written tenancy agreement, the person paying the rent was to be considered the tenant for the purposes of the Act. He testified that he was not advised that NK was paying rent on JE's behalf and asked rhetorically how could he have known that NK was paying rent on behalf of JE. He testified that NK could have been paying rent for all three of her sons out of her own pocket, rather than simply acting as an agent, facilitating payments by etransfer.

The landlord served the Notice on NK on November 27, 2020 by registered mail. A copy of the Notice was not entered into evidence by either party. The parties testified that the Notice named NK as the tenant. It did not name JE as a tenant. I gather the Notice was issued as a result of actions by JE.

WS testified that he is afraid of JE and did not want to serve him personally. He testified that JE has put security cameras up on the site, so he did not want to enter it when JE

was not present to post the Notice on the door. He testified that he does not have a mailing address for JE. As such, he testified he served NK with the Notice.

NK disputed the Notice on the basis that she is not a tenant.

The parties did not make submissions as to the reasons why the Notice was issued, although I note that the landlord submitted four warning letters into evidence, all of which name JE as the tenant of the site.

### **Analysis**

Section 40 of the Act sets out the conditions under which a landlord may issue a tenant a notice to end tenancy.

Section 45 of the Act states:

#### **Form and content of notice to end tenancy**

- 45** In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the manufactured home site,
  - © state the effective date of the notice,
  - (d) except for a notice under section 38 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
  - (e) when given by a landlord, be in the approved form.

Rule of Procedure 6.6 states:

#### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, a landlord must not only prove it is more likely than not only that a tenant acted in a manner that warrants the issuing of a notice to end tenancy, but also that the notice to end tenancy meets the form and content requirements of section 45. I note that, implicit in the requirement for a landlord to use the “approved form” (in this case, form #RTB-33) is the requirement that the form be correctly completed. This includes correctly identifying the tenant.

As neither party provided a copy of the Notice in their evidence package, I cannot assess whether or not the Notice meets with the form and content requirements of section 45. As the landlord bears the evidentiary burden to prove the Notice is valid, the inability to assess whether it meets the section 45 requirements means that the landlord has failed to discharge its evidentiary burden. Therefore, the Notice must be cancelled.

I note that it is not uncommon for parties to fail to upload a copy of a notice to end tenancy prior to the hearing. An arbitrator has the discretion to allow a party to upload the missing notice during a hearing under Rule of Procedure 3.19. In this case, however, I declined to exercise this discretion, as, based on the testimony of the parties, I found that the Notice was manifestly deficient, naming an NK as a tenant when she was not one.

In the hearing, the vast majority of the submissions related to the status of NK. I accept NK's timeline of events relating to the history of ownership of the manufactured home and of the occupancy of the site as correct. Neither of the landlord's representatives made submissions to the contrary.

In order to determine NK's status, the events following her mother's moving out of the park must be examined.

The parties agree that after NK's mother moved out, JE began to occupy the manufactured home. WS acknowledged that he knew this was the case at the time. Neither of the landlord's representative claimed that NK lives or ever lived on the site. Rather, their basis for the position that NK is a tenant rests on two arguments:

- 1) WS's argument that the owner of the manufactured home is the tenant of the site; and
- 2) AT's argument that the individual paying the monthly rent is the tenant.

I will address each of these in turn.

1. Is the owner of the manufactured home the tenant?

The Act makes no connection between the individual possessing an ownership interest in a manufactured home and the status of that individual as a tenant. There is no basis in the Act for the position advanced by WS. It may often be the case that the owner of the manufactured home is the same as the tenant renting a site from a landlord, but it is not a requirement. A tenant may rent a manufactured home from a third party and rent a manufactured home site from a landlord.

In any event, even if I accepted WS's argument (which I explicitly do not), I would still not find that NK was a tenant for the simple reason that there is no evidence to suggest that she is the owner of the manufactured home. The landlord tendered no evidence as to ownership, and NK testified that it was owned first by her mother and then by JE.

As such, I do not find that NK is a tenant on this basis.

2. Is the status of NK determined by the fact that she etransferred rent payments?

When it is unclear who is a tenant and who is merely an occupant of a manufactured home park site, it is helpful to look at the surrounding circumstances. These will assist in determining the true status of an individual under the Act. The identity of who pays the rent is one factor which *may* suggest that someone is a tenant, but it is neither the sole nor determinative factor.

I must first note that section 28(1) of the Act states:

**Assignment and subletting**

**28** (1) A tenant may assign a tenancy agreement or sublet a manufactured home site only if one of the following applies:

- (a) the tenant has obtained the prior written consent of the landlord to the assignment or sublease, or is deemed to have obtained that consent, in accordance with the regulations;

No written agreement relating to an assignment or sublet of the site was made. The circumstances by which an assignment may be deemed were not met. As such, I find that NK's mother's original tenancy was not assigned. Rather, when she moved out, and JE moved in, a new tenancy agreement was created, but was not reduced to writing.

Based on the testimony of WS and NK, I do not believe that the parties turned their mind to whether they were assigning the prior tenancy or creating a new one. Similarly, I do not find that WS turned his mind to who the landlord was actually renting the site to. Rather, I find that his primary concern was that the site generated income for the landlord (which I have inferred from his statement "we don't care who pays rent as long as it gets paid"). It may be that WS did not think it necessary to confirm who the tenant actually was, as he believed that ownership of the manufactured home would be determinative. I cannot say.

It is undisputed that WS knew that JE would be residing on the site and that NK would not be. It is also not disputed that NK transferred rent to the landlord for not only JE, but also for her other two sons. I note that, as the amount of the monthly etransfers contained in the landlord's evidence is exactly three times that of the monthly rent for the site, it is likely that each etransfer payment represents payment of all three sons' rent.

The implication of the landlord's argument that since NK pays rent, she is the tenant, would seem to be that she is also the tenant of two other sites in the park as well. While this is technically possible (nothing in the Act prohibits it), I find that it is not a position

that NK would likely have agreed to or that could be reasonably inferred absent corroborating documentation (as a written tenancy agreement, or correspondence relating to the arrangement).

Finally, the only documentary evidence provided by either party which explicitly identifies a tenant of the site are the four warning letters. Significantly, each of these names JE as a tenant.

The facts that NK does not live on the site, she pays rent (on behalf of her sons, she alleges) for three sites in the park, and the warning letters identify JE as a tenant support the position that NK is not a tenant.

The fact that JE does not pay rent directly to the landlord and that NK pays on his behalf (either out of her own pocket or after being compensated by JE) supports the position that NK is a tenant and JE is merely an occupant.

Upon considering these factors, I find that the landlord has failed to prove it is more likely than not that NK is a tenant. Rather, I find it more likely that that she acted as an agent for JE when making the e-transfer payments of rent. I find, based on the warning letters entered into evidence, that prior to issuing the Notice, the landlord considered JE to be the tenant of the site. I think it likely that NK was named as a tenant on the Notice, in part, due to WS's purported fear of JE, and that naming NK was a path of least resistance. In the past, WS named JE as a tenant on written notices relating to his conduct.

The landlord's failure to properly document the change in occupancy of the site following the departure of NK's mother has led to the current situation. The landlord's position that NK was a tenant was certainly arguable, however the preponderance of probabilities has led me to conclude that JE, and not NK, is the tenant of the site.

Accordingly, the Notice (which named NK as tenant) is invalid, and of no force or effect.

This decision is made purely on procedural grounds. I explicitly make no findings as to whether JE engaged in activities the landlord alleges as a basis to end the tenancy.

As NK has been successful in her application, I find that she is entitled to recover her filing fee of \$100 from the landlord.

### **Conclusion**

The application is successful. The Notice is cancelled. The tenancy shall continue.

Pursuant to section 72 of the Act, I order that the landlord pay NK \$100, representing the reimbursement of the filing fee.

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: February 3, 2021

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Residential Tenancy Branch