



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REMIS ENTERPRISES CORPORATION  
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 *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated December 27, 2020 ("1 Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The landlord's two agents, landlord NM ("landlord owner") and landlord VM ("landlord's agent"), and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. This hearing lasted approximately 46 minutes.

The landlord's agent confirmed that the landlord owner is the owner of the landlord company named in this application. She stated that the rental unit is owned by the landlord company ("landlord"). She confirmed that she had permission to represent the landlord owner, who is her father, and the landlord company at this hearing.

At the outset of this hearing, the landlord's agent stated that she wanted to call her mother as a witness and that her mother was sitting in a different room. Before the hearing ended, I asked the landlord's agent if she wanted to call her witness to testify, and she said that she did not want to because it was unnecessary for her to do so.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant confirmed receipt of the landlord's evidence. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence.

At the outset of the hearing, I explained the hearing and settlement processes to both parties. Both parties had an opportunity to ask questions. Both parties affirmed that they were ready to proceed with the hearing, they did not want to settle, and they wanted me to make a decision regarding this application.

Pursuant to section 64(3)(c) of the *Act*, I amend the tenant's application to correct the rental unit address. Both parties consented to this amendment during the hearing.

The tenant confirmed personal receipt of the landlord's 1 Month Notice on December 27, 2020. The landlord's agent confirmed service of the notice using the above method on the above date. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on December 27, 2020.

During the hearing, the tenant confirmed that she was not pursuing her application for an order for the landlord to comply with the *Act*, *Regulation* or tenancy agreement. Therefore, this application is dismissed without leave to reapply.

#### Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession for cause?

Is the tenant entitled to recover the filing fee for this application?

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions are reproduced here. The important and relevant aspects of the tenant's claims are set out below.

Both parties agreed to the following facts. This tenancy began on May 1, 2018. Monthly rent in the amount of \$1,520.00 is payable on the first day of each month. A security deposit of \$750.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit. The rental unit is a suite on the ground floor of a house. The tenant does not live in a manufactured home on a manufactured home site in a manufactured home park.

Both parties agreed that the landlord's 1 Month Notice indicates an effective move-out date of January 31, 2021. Both parties agreed that the landlord indicated the following reason on the notice:

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

The tenant seeks to cancel the 1 Month Notice and to recover the \$100.00 application filing fee. The landlord seeks an order of possession based on the 1 Month Notice.

The landlord's agent stated the following facts. The landlord issued the 1 Month Notice because the tenant assigned two parking stalls. There are four parking stalls at the house just for the use of the tenants and the landlord. The tenant's tenancy agreement does not include a parking stall but due to the landlord owner's "goodwill," he allowed the tenant to use the parking stall. The tenant then sublet two parking stalls to a third party without the landlord's written consent. One of the people subletting the stall, works for a construction company and contacted the landlord owner, which is when he found out about the sublet. In November, there were construction trailers in the parking stalls. The parking stall is a manufactured home site. The landlord submitted photographs of the construction trailers, showing that they are not being used for living purposes. The small trailer was removed at the end of December 2020 and the big trailer was moved at the beginning of January 2021. The landlord still wants to end this tenancy even though the trailers were removed because the tenant should not have rented out the two parking stalls without the landlord's written consent.

The tenant stated the following facts. She disputes the landlord's 1 Month Notice because she did not sublet two parking stalls. She was told by the landlord owner that each parking stall was for the use of each tenant at the rental property. There is one stall for the tenant, two stalls for two other tenants living at the other two rental units, and the last stall is for the landlord. The tenancy agreement does not include a parking stall, the landlord owner told the tenant verbally that she could use it. The tenancy agreement does not say that the tenant needs the landlord's written permission to rent out her parking stall. The landlord owner noticed two large trailers in two parking stalls, the tenant told him that she had only rented out her one stall, and the other trailer was not in the tenant's parking stall, it was in another tenant's stall. The tenant told the person renting her parking stall to move his trailer because the landlord owner got upset at the tenant, so he moved it at the end of December 2020.

## Analysis

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on December 27, 2020, and filed her application to dispute it on January 4, 2021. Accordingly, I find that the tenant's application was filed within the ten-day time limit under the *Act*. Where a tenant applies to dispute a 1 Month Notice within the timeline, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

On a balance of probabilities and for the reasons stated below, I find that the landlord did not issue the 1 Month Notice for a valid reason.

A rental unit is defined in section 1 of the *Act*, as:

*"rental unit" means living accommodation rented or intended to be rented to a tenant;*

Section 1 of the *Manufactured Home Park Tenancy Act* ("MHPTA") states the following, in part:

*"manufactured home" means a structure, other than a float home, whether or not ordinarily equipped with wheels, that is*

- (a) designed, constructed or manufactured to be moved from one place to another by being towed or carried, and*
- (b) used or intended to be used as living accommodation;*

*"manufactured home park" means the parcel or parcels, as applicable, on which one or more manufactured home sites that the same landlord rents or intends to rent and common areas are located;*

*"manufactured home site" means a site in a manufactured home park, which site is rented or intended to be rented to a tenant for the purpose of being occupied by a manufactured home;*

I find that this is a residential tenancy for the rental of a residential unit, as both parties agreed that the tenant lives in a suite in a house. I find that this is not the rental of a manufactured home on a manufactured home site in a manufactured home park. Both parties agreed to the above facts during the hearing.

I find that a parking stall is not a rental unit as per the definition in section 1 of the Act, as noted above. The tenant did not occupy the parking stall as living accommodation. The parking stall is not included in rent, nor is it part of the parties' written tenancy agreement, as agreed to by both parties during the hearing. The use of the parking stall is a private issue between both parties.

An assignment is defined in Residential Tenancy Policy Guideline 19, in part:

*Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.*

A sublet is defined in Residential Tenancy Policy Guideline 19, in part:

*When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the subtenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit...*

I find that the tenant did not assign her rights under a tenancy agreement, because the parking stall was not included in the tenancy agreement. I find that the tenant did not sublet because that relates to a rental unit, which does not include a parking stall. Further, I find that the tenant did not transfer her rights under the tenancy agreement to another tenant under a sublease tenancy agreement, since the parking stall was not included in the tenancy agreement.

I find that the tenant did not assign or sublet her parking stall because it is not a rental unit, nor is it a manufactured home site or manufactured home park, as noted above. I find that the parking stall use was a private verbal agreement between both parties. I also note that the issue has been resolved, since both trailers were moved out of the two parking stalls, as agreed by both parties.

Accordingly, I allow the tenant's application to cancel the 1 Month Notice. The landlord's 1 Month Notice, dated December 27, 2020, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for cause. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was partially successful in this application, I find that she is entitled to recover the \$100.00 filing fee from the landlord. I order the tenant to deduct \$100.00 total from her future monthly rent due to the landlord at the rental unit, in full satisfaction of the award for the application filing fee.

### Conclusion

The landlord's 1 Month Notice, dated December 27, 2020, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for cause. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$100.00 total from her future monthly rent due to the landlord at the rental unit, in full satisfaction of the award for the application filing fee.

The tenant's application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, is dismissed without leave to reapply.

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: March 29, 2021

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Residential Tenancy Branch