



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PARKRIDGE LIFESTYLE COMMUNITIES  
INC. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC-MT

### Introduction

On March 3, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 40 of the *Manufactured Home Park Tenancy Act* (the “Act”) and seeking more time to cancel the Notice pursuant to Section 59 of the *Act*.

The Tenant attended the hearing. L.M., G.M., and C.B. attending the hearing as agents on behalf of the Landlord. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties provided a solemn affirmation.

The Tenant advised that he served the Landlord the Notice of Hearing package by hand on or around March 11, 2021 and L.M. confirmed receipt of this package. As such, and in accordance with Sections 81 and 82 of the *Act*, I am satisfied that the Landlord was duly served with the Tenant’s Notice of Hearing package.

The Tenant advised that he did not serve his evidence to the Landlord. As this evidence was not served in accordance with Rule 3.14 of the Rules of Procedure, I am satisfied that there is no documentary evidence from the Tenant for consideration on this file.

L.M. advised that he served the Landlord's evidence to the Tenant on May 14, 2021 by registered mail (the registered mail tracking number is noted on the first page of this Decision). The tracking history indicated that a notice card was left on May 17, 2021 indicating that there was a package for pickup; however, it has not been retrieved. Based on this evidence, I am satisfied that the Landlord's evidence was deemed to have been received five days after it was mailed and that this complied with the service timeframe requirements of Rule 3.15 of the Rules of Procedure. As such, I have accepted this evidence and will consider it when rendering this Decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 48 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- Is the Tenant entitled to more time to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on June 1, 2019, that rent was currently established at \$545.00 per month, and that it was due on the first day of each month. A copy of the signed tenancy agreement was submitted as documentary evidence.

L.M. advised that the Notice was served to the Tenant by registered mail on February 16, 2021 and the Tenant confirmed he received this on February 22, 2021. The reasons

for the Notice being issued were because the “Tenant or a person permitted on the property by the tenant has put the landlord’s property at significant risk”, the “Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park”, the “Tenant has not done required repairs of damage to the unit/site/property/park”, and because of a “Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.” The effective end date of the tenancy was noted on the Notice as March 31, 2021.

L.M. advised that within 20 days of the tenancy commencing, the Tenant had been issued a warning letter regarding the upkeep and maintenance of his site. He stated that 18 warning letters have been served to the Tenant for various issues since. He submitted that the Tenant’s site and home are in a state of disrepair, which is in contravention of the tenancy agreement and park rules. The Tenant has been warned multiple times in writing to maintain the lawn and to remove excess debris and refuse from his site, and the Landlord has offered to work with the Tenant to assist in removal of the debris; however, the Tenant has not complied with the Landlord’s warnings. As this site is in close proximity to adjoining sites, other residents have complained about the unsightly manner with which the Tenant keeps this property. He referenced the warning letters, the pictures of the debris, and complaints submitted as documentary evidence to support these allegations.

He then advised that the Tenant has immense foot traffic that comes and goes from the site at all hours of the day and night. Much of this traffic is unusual, and likely consistent with criminal activity as most of these people come and go within minutes. These intoxicated guests make a lot of noise and trespass onto other residents’ sites. The police have been contacted about these activities and have attended to investigate. The Tenant has also been warned in writing about these incidents; however, the noise has gotten worse. He referenced the warning letters and complaints, submitted as documentary evidence, to support these allegations. As well, a log was cited that outlined the traffic history and times of the Tenant’s guests.

The Tenant initially advised that he does not have guests on his site and he suggested that he was the person responsible for entering other residents’ property late at night. However, he then stated that his stepdaughter and stepson also visit the site. Shortly after this, he then contradictorily stated that friends of his ex-wife follow her onto the site and that he has “tried his best to turn them away”. He testified that these people do not comply with his attempts to stop them, that they “tend to come down at bad times”, and that they “maybe come down at night”.

With respect to the maintenance of the site and the debris, the Tenant advised that he only received “maybe” three warning letters from the Landlord and that he did not understand them. However, he then contradictorily stated that he did understand the Landlord’s warnings that the property was at risk. He submitted that he has cleaned up the debris around the site over the last few months, and that he did this because he wanted to, as well as because the Landlord wanted him to. He stated that the site is “spotless” now but that he “needs an opportunity again” to clean up the site.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord’s Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 45 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 45 and I find that it is a valid Notice.

With respect to the Tenant’s request for more time to dispute the Notice, as the Tenant filed this Application within the 10 day timeframe that he was required to do so, I am satisfied that the Tenant’s request for more time is unnecessary.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 40 of the *Act* if any of the reasons cited in the Notice are valid. Section 40 of the *Act* reads in part as follows:

#### ***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:*

*(c) the tenant or a person permitted on the residential property by the tenant has*

*(iii) put the landlord's property at significant risk;*

*(e) the tenant or a person permitted in the manufactured home park by the tenant has caused extraordinary damage to a manufactured home site or the manufactured home park;*

*(f) the tenant does not repair damage to the manufactured home site, as required under section 26 (3) [obligations to repair and maintain], within a reasonable time;*

*(g) the tenant*

*(i) has failed to comply with a material term, and*

*(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;*

Furthermore, Policy Guideline # 8 outlines a material term as follows:

“A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.”

As well, this policy guideline states that “To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;

- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.”

I also find it important to note that when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. Furthermore, given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility.

With respect to the reason on the Notice of a breach of a material term, the policy guideline states that “it is possible that the same term may be material in one agreement and not material in another.” I find that this means that determining what would be considered a material term is based on the fact pattern of each specific scenario and that it is up to the Arbitrator in each case to evaluate the evidence presented and make a determination on this matter. In reviewing the tenancy agreement, I am satisfied that there are terms in the tenancy agreement pertaining to occupants and invited guests, conduct, and repairs and maintenance of the site, and that these are material terms of the tenancy.

When reviewing the totality of the evidence and testimony before me, I find it important to note that during the hearing, the Tenant provided much testimony that directly contradicted what he had previously testified to. This causes me to question the reliability and the credibility of his submissions on the whole. While he disputed receiving 18 warning letters, based on my doubts of the Tenant’s truthfulness of his submissions, I find that I prefer the Landlord’s evidence.

Furthermore, the Tenant did confirm that he received at least three warning letters and that he understood the nature and content of these letters. As a result, I am satisfied that he was aware that the Landlord had raised some concerns with the Tenant’s actions and behaviors, and that of his guests, on the site. I am also satisfied from these letters that he was provided with an opportunity to correct these issues, but he did not, despite being given multiple opportunities to do so.

When weighing the inconsistent, contradictory testimony of the Tenant against the Landlord’s documentary evidence, I am satisfied that there is a pattern of similar, continuous behaviour of the Tenant and/or his guests, and that he continued to breach the material terms of the tenancy agreement after being warned in writing to correct

these issues. As well, I find that this pattern of behaviour will continue to repeat itself should the tenancy continue.

Ultimately, I am satisfied that the Landlord has provided sufficient evidence to justify service of the Notice under the reason of a breach of a material term. As such, I find that the Landlord is entitled to an Order of Possession that takes effect on **June 30, 2021 at 1:00 PM** after service of this Order on the Tenant. The Landlord will be given a formal Order of Possession which must be served on the Tenant. If the Tenant does not vacate the rental unit on **June 30, 2021 at 1:00 PM** after service of the Order, the Landlord may enforce this Order in the Supreme Court of British Columbia.

### Conclusion

I dismiss the Tenant's Application and uphold the Notice. I grant an Order of Possession to the Landlord effective **June 30, 2021 at 1:00 PM after service of this Order** on the Tenant. Should the Tenant fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: June 14, 2021

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Residential Tenancy Branch