



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SPECTACLE LAKE HOME PARK  
(1989) LTD and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      ET FFL CNC

### **Introduction**

This hearing dealt with the landlord's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- An early end to this tenancy and an Order of Possession pursuant to section 49; and
- authorization to recover the filing fee for this application, pursuant to section 65.

This hearing was originally set to deal with the landlord's application only, but it came to my attention during the hearing that the same parties had a second matter set for a hearing on December 6, 2021 at 11:00 a.m. to deal with the tenant's application pertaining to this same tenancy for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 40.

DM ("landlord") represented the landlord in this hearing, while the tenants appeared with their legal counsel JB. With the consent of both parties, both applications were dealt with today. Accordingly, the hearing scheduled for December 6, 2021 is cancelled, and attendance of either party is not required for that appearance. Both parties were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

At the outset of the hearing, it was confirmed that the tenant SC's name was misspelled on the landlord's application. As neither party was opposed, SC's name was corrected to reflect the proper spelling of SC's name.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenants were duly served with the Applications and evidence.

The landlord provided undisputed testimony that the tenants were served with a 1 Month Notice dated July 23, 2021, with an effective date of August 31, 2021. In accordance with sections 88 and 90 of the *Act*, I find that the tenants deemed served with the 1 Month Notice 5 days after registered mailing.

### **Issues(s) to be Decided**

Is the landlord entitled to an Order of Possession pursuant to section 49 of the *Act*?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession pursuant to section 48 of the *Act*?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

The month-to-month tenancy began on September 1, 2002, with monthly pad rental set at \$589.71, payable on the first of the month.

The landlord served the tenants with a 1 Month Notice to End Tenancy for Cause dated July 23, 2021, with an effective move-out date of August 31, 2021. On August 12, 2021, the landlord filed an application for an early termination of this tenancy pursuant to section 49 of the *Act* as the landlord is concerned about the immediate and ongoing threat caused by the tenants' rottweiler to other tenants in the park, as well as employees or contractors who would need to gain access to the tenants' fenced yard, especially in the case of an emergency when 24 hour's notice is not possible. Both parties confirmed that the tenants' yard contains the main water shut off valves for the entire park, as well as an electrical hut containing hydro meters for approximately 20 units in the park.

The landlord testified that the tenants were served with the 1 Month Notice following an incident that took place on April 12, 2021 when one of the tenants' dogs, a rottweiler which was approximately fourteen months old at the time, had bitten a neighbouring tenant's arm. The neighbouring tenant had to seek medical attention for the bite, and later reported the incident to the park management on or about April 28, 2021. The landlord provided a detailed summary of the events in relation to this matter and dispute. The landlord states that prior to this report, another tenant had filed a complaint about the same dog, expressing concern about the aggressive behaviour of the dog, specifically the dog being left unattended and "out of control", growling and barking in an intimidating manner, and jumping at the fence while the tenant was walking on the roadside past the unit. The landlord also submits that there have been complaints about the tenants' dogs in the past, and a warning letter was served on the tenants in November 2002 regarding a vicious dog.

The landlord expressed concern, not only for other tenants and guests walking by on the adjacent roadways of the corner unit, but also for employees and contractors who may need to access the yard for maintenance and repair purposes, which may include little notice in case of an emergency. The landlord testified that the dogs are not authorized, and are in contravention of four of the park rules which stipulates that only one dog and one cat is allowed per household, and that any kind of pet which, "due to the disposition and size of the pet, elicits a response of fear or a sense of intimidation or presents a danger or would cause a nuisance for fellow tenants" is prohibited. The landlord also notes that the park rules require written approval of the landlord as well as a completed Pet Agreement prior to the admission of the pet into the Park, which the tenants have not obtained. Lastly, the landlord submits that the tenants were required to maintain control of their pets in a manner that prevents them from unreasonably disturbing others. The landlord provided a copy of the warning letter to the tenants dated April 30, 2021 about the tenants' dogs and contravention of the rules.

It is undisputed by both parties that an incident took place on April 12, 2021 when the neighbour was bitten. Both parties provided different versions of the event that took place on that day. The neighbour had attended outside the fence of the property, and testified that he had asked permission to give the dog a cookie. The neighbour submits that after permission was given by both tenants who were present, he had reached over to give the dog a cookie when the neighbour was bitten. The tenants submit that the neighbour had reached over before permission was given, and the dog had mistakenly bitten the neighbour instead of the cookie. The tenants testified that they had offered the neighbour help, and that the dog is not normally a threat due to the health conditions suffered by the dog. The tenants submitted documentation to support that the dog

suffers from medical issues which affects the dog's mobility. The tenants also testified that the main role of this specific dog was an emotional support dog as the tenant SC suffers from Posttraumatic Stress Disorder, and was prescribed an Emotional Support Animal (Dog) by a registered psychologist. A copy of the letter dated January 22, 2021 was submitted in evidence.

The landlord filed this application under section 49 of the *Act* as the landlord is not confident that the tenants would comply with the park rules, and is therefore jeopardizing the safety of all tenants, guests, and employees at the Park. The landlord provided a history of their dealings with the tenants, including a copy of a decision for a dispute resolution proceeding that took place on March 4, 2014. In the decision, the Arbitrator had made a finding that the tenants had breached the *Act* and interfered with the landlord's lawful right and interests by denying the landlord access to the rental site for reasonable and lawful purposes, such as for inspections, repairs and maintenance. The tenants were cautioned in the decision that interfering with the landlord's lawful right or interest in the property may be grounds to end the tenancy for cause under section 40 of the *Act*, and that the decision may be used as evidence at future hearings that the tenants have been cautioned.

The tenants are disputing both the landlord's application under section 49 of the *Act* for an early termination of the tenancy, as well as the 1 Month Notice for Cause dated July 23, 2021. The 1 Month Notice provides the following reasons for why the landlord is seeking an end of this tenancy:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that following the issuance of the warning letter on April 30, 2021, the tenants have not permanently removed the rottweiler as instructed, nor have they complied with the park rules as the tenants have been warned to do so in the letter. Furthermore, the landlord submits that on July 21, 2021, an employee had witnessed the rottweiler sitting on the tenants' deck growling at employees, who were too fearful to approach the yard. The landlord feels that the tenants have been provided an opportunity to remedy the matter, but have not taken any steps to do so. The landlord feel that the tenants and their dog pose an immediate and ongoing threat to the safety of employees and other park residents, and that they have significantly interfered with or disturbed the landlord and other tenants.

The tenants dispute that any material term of the tenancy agreement was breached considering the fact that despite the park rules, the tenants previously had multiple dogs, including rottweilers, which the landlord was aware of. The tenants submit that other residents at the park also own multiple dogs. The tenants also submitted letters from contractors and other residents confirming that the rottweiler did not pose a threat to them. The tenants submit that the April 12, 2021 occurred as the dog was still young and untrained, and had accidentally bitten the tenant when he reached over without warning or consent of the tenants. The tenants submit that this incident did not constitute an attack, nor does the dog pose a threat to anyone. The tenants submit that if the tenancy was allowed to continue, the tenants would post warning signs, and would constrain the dog in a manner that would prevent the dog from hurting others who may accidentally or unknowingly enter the yard, provoking the dog.

The tenants submit that people would stop to harass and taunt the dogs, and the tenants have since installed a 2 foot lattice fencing on top of the existing fence. The tenants also submit that that the rottweiler wears an electronic collar and has severe hip dysplasia that prevents the dog from jumping.

### **Analysis**

Section 49 of the *Act* establishes the grounds whereby a landlord may make an application for dispute resolution to request an end to a tenancy and the issuance of an Order of Possession on a date that is earlier than the tenancy would end if notice to end the tenancy was given under section 40 for cause. In order to end a tenancy early and issue an Order of Possession under section 49, I need to be satisfied that the tenant has done any of the following:

- *significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;*
- *seriously jeopardized the health or safety or a lawful right or interests of the landlord or another occupant.*
- *put the landlord's property at significant risk;*
- *engaged in illegal activity that has caused or is likely to cause damage to the landlord's property;*
- *engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property;*
- *engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;*
- *caused extraordinary damage to the residential property, and*

*it would be unreasonable, or unfair to the landlord, the tenant or other occupants of the residential property, to wait for a notice to end the tenancy under section 47 [landlord's notice: cause]... to take effect.*

The reasons cited in the landlord's application would need to be supported by sworn testimony and/or written, photographic or video evidence in order to qualify for the first part of section 48 of the *Act*. Separate from whether there exist reasons that would enable a landlord to obtain an Order of Possession for Cause, the second part of section 49 of the *Act* as outlined above would only allow me to issue an early end to tenancy if I were satisfied that it would be unreasonable or unfair to the landlord to wait until an application to end the tenancy for cause were considered.

It was undisputed by both parties that one of the tenants' dogs had bitten another tenant on the property on April 12, 2021, and that this dog is still on the property despite the landlord's request that the dog be permanently removed due to concerns about safety and failure to comply with the park rules. The tenants submit that the dog in question is not a threat, and that the dog was often provoked by people passing by the fenced yard, including on the day of this incident when the tenant had reached over without permission to give the dog a cookie. The tenants submits that the dog was young and untrained at the time, and that this incident did not constitute an attack, and disputes the version of the events provided by the tenant who was bitten. The tenants submit that they had taken steps to reduce the likelihood of future incidents, and will take additional steps such as posting warning signs and keeping the dog restrained when outside the home.

In addition to the incident on April 12, 2021, the landlord provided a detailed summary of incidents that have taken place in the past, as well as after the warning letter was issued on April 30, 2021 to support that their belief that the tenants' dog poses an ongoing threat to the safety of other residents and landlord's employees, as well as the landlord's right to fulfill their obligations, which involve access to the fenced area. The landlord submits that that the dog poses a threat to those not only inside the fence, but also outside the fence in case the dog manages to escape. The landlord is not confident, based on the history of past dealings with the tenants, that they would comply with the rules and warnings, and ensure that the dog does not injure or intimidate others.

As the landlord had filed an application under section 49 of the *Act*, I will address this application first. In consideration of the testimony and evidence before me, I am not

satisfied that the landlord had provided sufficient evidence to support that the tenants' dog poses an immediate or ongoing threat to others if this tenancy was to continue. An early end to tenancy is to be used only in situations where there is a compelling reason to address the dispute very quickly and when circumstances indicate that the standard process for obtaining an Order of Possession following the issuance of a 1 Month Notice for Cause would be unreasonable or unfair. As stated in Residential Policy Guideline 51, applications to end a tenancy early for very serious breaches only.

I acknowledge the fact that the landlord did issue a 1 Month Notice on July 23, 2021. I also acknowledge the landlord's concerns about safety of the other two hundred and fifty residents as well as the employees at this Park. In light of the evidence before me, however, I am not satisfied that the landlord has demonstrated that there is an immediate danger or threat to the landlord or other residents at this park. Despite the landlord's concerns about the tenants' dog escaping and attacking others, I find that this fear has not been substantiated in evidence. Although the landlord had referenced the fact that some employees and residents have expressed fear over the tenants' dog or dogs, I am not satisfied that this fear is founded. As noted above, an Order of Possession pursuant to section 49 of the *Act* can only be granted in circumstances so serious that the landlord cannot wait for the standard process following the issuance of a 1 Month Notice to End Tenancy for Cause. In this case I find that both parties provided contrasting accounts of what led to the dog bite incident on April 12, 2021, and whether the tenants' dog was truly a threat to others. I find that the tenants have not only provided contrasting accounts of how the tenants' dog propensity and ability to attack, but the tenants have also provided details of the steps they have taken, or are willing to take, to ensure that a similar or more serious incident will not take place in the present or future.

Although I find that the incident that took place on April 12, 2021 is concerning, I do not find that threat to be serious enough to support why this tenancy should end pursuant to section 49 of the *Act*. I am not satisfied that the tenants' dog poses an immediate or significant threat to other tenants or employees if this tenancy was to continue. Despite the fact that the dog is still on the property, I am not satisfied that similar incidents have taken place since the dog bite on April 12, 2021, nor am I satisfied that similar incidents have taken place in the past. I find it undisputed that the tenant had reached over into the fenced area that day, which resulted in the dog bite. I accept the tenants' testimony that the tenants' dog was very young at the time, and had yet to undergo training. I find that the threat of future incidents have not been established by the landlord. For these reasons, I dismiss the landlord's application for an early end to this tenancy under section 49 of the *Act*.

I note that although I have dismissed the landlord's application for an Order of Possession under section 49 of the *Act*, future incidents involving the tenants' dogs could result in the possible end of this tenancy pursuant to another application under section 49 of the *Act*, or pursuant to a 1 Month Notice for Cause. I caution the tenants to ensure that their dogs do not pose a threat to the safety or well-being of other tenants or landlord's employees on or near the property.

I will now consider the tenants' application to cancel the 1 Month Notice dated July 23, 2021. Section 40 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenants may dispute the 1 Month Notice by filing an application for dispute resolution within ten days after the date the tenants receives the notice. As the tenants filed their application is within the time limit under the *Act*, the onus, therefore, shifts to the landlord to justify that the tenancy should end on the grounds provided on the 1 Month Notice.

The landlord is seeking an end of this tenancy for a material breach of the tenancy agreement. A party may end a tenancy for the breach of a material term of the tenancy agreement, but the standard of proof is high. To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement, as opposed to the consequences of the breach. It falls to the person relying on the term, in this case the landlord, to present evidence and arguments supporting the proposition that the term was a material term. As noted in RTB Policy Guideline #8, 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. The question of whether or not a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. It is entirely possible that the same term may be material in one agreement and not material in another. Simply because the parties have stated in the agreement that one or more terms are material is not decisive. The Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

Policy Guideline #8 reads in part as follows:

*To end a tenancy agreement for breach of a material term the party alleging a breach...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...*

In regards to the landlord's allegation that there has been a breach of a material term of the tenancy agreement, the tenants dispute that the retention of the rottweiler on the property constitutes a breach of a material term of the tenancy agreement, given that the landlord had allowed the tenants to keep multiple rottweilers on the property in the past, and other tenants multiple dogs at the same park despite the written rules.

Although I find the letter dated April 30, 2021 to be extremely clear about the expectations of the tenants, I find that the legal principle of estoppel applies in this case. Estoppel is a legal doctrine that holds that one party must be strictly prevented from enforcing a legal right to the detriment of the other party if the first party has established a pattern of failing to enforce this right, and the second party has relied on that conduct and has acted accordingly. To return to strict enforcement of their right, the first party must give the second party notice (in writing) that they are changing their conduct, and are now going to strictly enforce the right previously waived or not enforced.

As shown by the evidence and testimony before me, the tenants did have multiple dogs of the same breed and size in the past, and the tenancy had continued for many years with these dogs on the property until they had passed away. The tenants had recently acquired the new rottweiler, which the landlord requested be removed after complaints had been filed. I find that the tenants have been allowed multiple dogs of similar breed and size without facing similar consequences, and by doing this, the landlord has implied that doing so does not constitute a material breach of the tenancy agreement. Despite the landlord's submissions that the tenants have allowed unauthorized pets on the property, I am not satisfied that the landlord had met the burden of proof to support that the tenants have breached a material term of the tenancy agreement.

The second reason provided on the 1 Month Notice is that 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 landlord referenced a previous dispute that took place in March of 2014 when the tenants were warned about interfering with the landlord's right and ability to fulfill their duties as landlords. In this case, the landlord had expressed concern about the landlord's ability to access the property without fear of intimidation or attack by the tenants or their dogs. The landlord also submitted evidence to support that the tenants' dogs have disturbed others with their behaviour, which has caused others to be fearful. In light of the evidence before me, I am satisfied that the previously described dispute and incidents took place over seven years ago. Although I find that an ongoing dispute does exist between the parties, I am not satisfied that the landlord has provided sufficient evidence to justify the ending of this tenancy on the grounds that the tenants have significantly interfered with, or disturbed the landlord.

Accordingly, I allow the tenants' application to cancel the 1 Month Notice, and this tenancy is to continue until ended in accordance with the *Act* and tenancy agreement.

The filing fee is a discretionary award issued by an Arbitrator usually after a hearing is held and the applicant is successful on the merits of the application. As the landlord was not successful in their application, the landlord must bear the cost of this filing fee.

**Conclusion**

The landlord's entire application is dismissed without leave to reapply.

I allow the tenants' application to cancel the 1 Month Notice dated July 23, 2021. The 1 Month Notice is of no force or effect, and the tenancy is to continue until ended in accordance with the *Act*.

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: September 14, 2021

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Residential Tenancy Branch