



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Manufactured Home Park Tenancy Act*, (the "Act") and the singular of these words includes the plural.

This hearing dealt with an application filed by the tenant for an order to cancel a One Month Notice to End Tenancy for Cause, pursuant to section 40.

The tenant attended the hearing, and the landlords attended the hearing with their counsel, VR. As both parties were in attendance, service of documents was confirmed. The landlord acknowledged receipt of the tenant's Notice of Dispute Resolution Proceedings and evidence; the tenant acknowledged receipt of the landlord's evidence package. Both parties confirmed they had no issues with timely service of documents.

### Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be upheld or cancelled?

### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The

principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The parties agree that the tenant was served with a One Month Notice to End Tenancy for Cause on June 23, 2021. She filed an application to dispute the notice five days later, on June 28, 2021. The copy of the notice provides an effective date of July 31, 2021 and the landlord gave the following reasons for ending the tenancy:

1. the tenant has allowed an unreasonable number of occupants in the unit/site
2. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
3. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
4. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property;
5. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
6. the tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
7. 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's counsel gave the following submissions. The tenant purchased a manufactured home situated in the landlord's manufactured home park and a tenancy agreement was signed by the parties in December of 2015. Landlord CM testified that their real estate agent likely has a signed copy of the tenancy agreement, but it was never given to the landlord, so no signed copy was entered as evidence.

Counsel submits that last winter, the tenant allowed friends to move their RV trailer into the park. According to counsel, there were 4 or 5 people living in the trailer. The tenant knew she required the landlord's authorization for this, under the tenancy agreement. The RV was not parked on a public road; it is parked by a fence on the landlord's property, right in front of the landlord's office.

The tenant has an unauthorized tenant living with her, as well. "S" has black teeth and counsel submits that "S" has been rude to contractors working in the park, giving them the middle finger. He was also witnessed throwing dog feces over the fence into an RV storage area. LS, the manager of the park hired by the landlord testified and called as a witness by the landlord testified she saw "the guy" throw it. She also testified that she saw the "fella" walk up the tenant's steps with some kind of chemical bottle. The witness was unable to provide a date for any of her testimony.

Counsel submits that the occupants of the RV are likely cooking up "meth" based on the landlord's observation of the "guy with black teeth", people coming to RV with delivery bags and the tenant's refusal to use the curbside garbage pickup. The landlord attributes the choice to get a garbage dumpster instead of using the curbside pickup is a telltale sign of a "meth" lab. The landlord is concerned that meth labs are unstable and potentially dangerous to other occupants of the park and the landlord.

Landlord's counsel stated that on May 29, 2021, another resident of the park told the landlord that the occupant of a vehicle parked while visiting the tenant's unit had a pitbull in his car that appeared to be choking on a rope around his neck. When the occupant came out, that person allowed the pitbull to "come at" the landlord and the other park resident, making them fear for their safety.

Lastly, counsel submits that the tenant's premises are in constant disarray with the plants in the backyard overgrown and garbage strewn since the tenant doesn't use the curbside pickup.

The tenant gave the following testimony. She never signed a contract saying she requires the permission of anybody to live with her. She owns the home she lives in and if she chooses to have a boyfriend live with her, that is her own business. The manufactured home is a large 3-bedroom house, the two of them occupying it is not excessive. There was a period of one and a half months where her cousin and 3 children lived with the tenant however they never made any noise.

There are other sites in the park where tenants are allowed to have RV trailers. The tenant argues that if the landlord had simply sent her a notice telling her the RV was not allowed, she would have had it moved immediately. The owner of the RV never lived in it, he parked it at the tenant's site while he worked on it, sleeping on the tenant's sofa for a total of 6 nights. The RV was there in February without access to heat, water and electricity. There is no way anyone could have lived in it.

The tenant denies all allegations of illegal activity brought by the landlord. She has never been charged with any offences and has never even had a speeding ticket. She is a schoolteacher and is aware of the effects of drug addiction. The police have never been called to her house, with the exception of the incident with the pitbull. The pitbull described by the landlord's counsel belonged to a plumber being considered by the RV owner to do some plumbing work on the RV. The pitbull was never on the tenant's site; the plumber's car was parked down the road.

There was a period for 3 months when she was sick with sepsis. During this time, the backyard did become overgrown. When the manager came to talk to her about it and offered his weedwhacker, the tenant got it cleaned up within a half an hour.

"S" is the tenant's boyfriend. The landlord has threatened "S", saying he would use a gun on "S". The stress of the notice to end tenancy has caused "S" to move out. The "chemicals" seen by the landlord's witness being carried by "S" is Isopropyl Alcohol used to fill hand sanitizer sprayers and clean paintbrushes.

Lastly, the tenant testified that the landlord has given her multiple different sets of park rules, some of which appear to contradict each other. Some say "sample" on the bottom. The tenant testified she never signed any of them, especially if they say the tenant requires the landlord's permission to have guests stay with her.

### Analysis

The parties agree the tenant was served with the notice on June 23<sup>rd</sup> and filed an application to dispute it on June 28<sup>th</sup>, five days later. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the grounds for the 1 Month Notice. In other words, the landlord must prove it is more likely than not the tenancy must end for the reasons identified on the notice.

I first turn the landlord's allegation that the tenant allowed an unreasonable number of occupants in the unit/site/property/park. Landlord's counsel points to clause 7 of the tenancy agreement. It states:

***OCCUPANTS*** No person, other than those listed in clause 1 or this clause may occupy the Site. A person not listed in clause 1 or this clause who resides on the Site for a period in excess of 30 cumulative days in any calendar year will be considered to be occupying the site contrary to this Agreement and without right or permission of the landlord. If the tenant anticipates an additional occupant, the tenant must promptly apply in writing for approval by the landlord for such person to become a tenant or an authorized occupant. Failure to obtain the landlord's written approval is a breach of a material term of this Agreement, giving the landlord the right to end the tenancy on proper notice.

In clause 1 of the tenancy agreement, the parties are to be identified. In reviewing the tenancy agreement, I note that it does not identify any named tenants. I also note that on the last page of the tenancy agreement, there are no signatures of the landlord or the tenant and the tenant is once again not named. In order for the landlord to enforce clause 7, the landlord must be able to identify who may occupy the site as the tenant. Without this information, I find the clause to be unenforceable. I find the landlord has provided insufficient evidence to satisfy me the tenancy should end for this reason on the notice to end tenancy.

Further, while the tenant has testified that the only occupants of the house are herself and her boyfriend (who has since moved out), I find the landlord has failed to establish that two people is unreasonable. Nor has the landlord satisfied me that there are 4 or 5 people living in the tenant's unit. The landlord did not provide any evidence such as photographs or testimony from witnesses to corroborate this statement. I do not find the landlord has provided any verifiable proof to satisfy me that the tenant has exceeded the number of occupants that any reasonable person would expect to live in that 3-bedroom house.

The second and third reasons for ending the tenancy relate to the tenant either significantly interfering with or unreasonably disturbing another occupant or the landlord; or seriously jeopardizing the health, safety or lawful right of another occupant or the landlord. The landlord was unclear in what specifically constitutes this breach, so I turn to the description of the events provided during the hearing. The landlord's counsel submits that the landlord and another occupant of the park were frightened

when the tenant's guest's plumber's dog lunged at them. While I accept that the tenant is responsible for the actions of people invited onto the property by the tenant, I do not find this single incident to be an example of a "significant interference" to the landlord or another occupant or a "serious jeopardization" of the landlord's health, safety or lawful right or the health, safety or lawful right of another occupant. The evidence before me was that the pitbull was kept within the dog owner's control at all times and that the consequence of the "lunge" was to frighten the landlord and the occupant of the park. With respect to the landlord's assertion that the tenant does not use the curbside pickup of garbage and prefers to dispose of her waste by hiring a bin, I note clause 4 of the tenancy agreement which states, *"The Park does not provide garbage or recycling pickup, and each Tenant must make his/her own arrangements."* I cannot find fault with the tenant's choice to make her own arrangements to dispose of garbage.

Turning to the next 3 reasons for ending the tenancy, "illegal activities" under section 40(1)(d) of the Act. Residential Tenancy Policy Guideline PG-32 [Illegal Activities] states:

*The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property. The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.*

*In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.*

Landlord's counsel provided many factors upon which the landlord bases his suspicion that the tenant may potentially be conducting "illegal activity" at her site in the park. Counsel submits that the tenant's boyfriend has been seen carrying "chemicals" into the tenant's unit and promotes the argument that the tenant hired a dumpster so she wouldn't be required to dispose of the evidence of a "meth lab" in the curbside

garbage. Counsel submits that even if the tenant herself wasn't involved in the illegal activity, she is responsible for those who are.

The landlord and his witness were unable to identify what the "chemicals" brought into the tenant's house were. I accept the tenant's explanation of the chemicals being Isopropyl Alcohol used to fill spray bottles during the pandemic and for cleaning brushes as an artist. The tenant is not required under the tenancy agreement to use the curbside garbage. The onus to prove the validity of the reasons to end tenancy fall upon the landlord. Due to a lack of credible supportive evidence, I find that on a balance of probabilities, there is no "illegal meth lab" at the tenant's home. A mere suspicion of illegal activity does not satisfy the requirement of "illegal activity" which:

- has caused or is likely to cause damage to the landlord's property
- has adversely affected or likely to adversely affect the quiet enjoyment, security, safety or physical wellbeing of another occupant of the residential property
- has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord

The landlord's last reason for ending the tenancy was for a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Policy Guideline PG-8 [Unconscionable and Material Terms] states:

*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.*

*Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.*

I advised the parties at the commencement of the hearing, only the evidence presented to me during the hearing would be considered in my decision, pursuant to Rule 7.4 of the Residential Tenancy Branch Rules of Procedure. The landlord's notice to end tenancy does not provide any specifics regarding the tenant's alleged failure to correct her actions after being given written notice to do so. Likewise, during the hearing, neither the landlord nor landlord's counsel directed my attention to any written notices provided to the tenant regarding incidents of the tenant breaching material terms of the tenancy agreement. Consequently, I find the landlord has not provided sufficient evidence for me to determine the tenant has failed to correct a breach of the tenancy agreement within a reasonable time after being given written notice to do so.

#### Conclusion

I find that the landlord has failed to present sufficient evidence to establish cause to end the tenancy. As a result I ordered that the Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligation remaining unchanged until ended in accordance with the Act.

**This decision is final and binding on the parties.**

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: October 29, 2021

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Residential Tenancy Branch