



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Deer Creek Estates  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC, FFT**

### **Introduction**

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

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 40 and 55 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 65 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, CS, and the Tenant, MS, attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

CS served the Tenant with a One Month Notice by posting the notice on the Tenant's door on September 27, 2021. The Tenant confirmed she received the One Month Notice on September 27 or 28, 2021. I find that the One Month Notice was served on the Tenant on September 28, 2021 according to Section 81(g) of the Act.

MS served the Notice of Dispute Resolution Proceeding package for this hearing to the Landlord via Canada Post registered mail on October 8, 2021 (the "NoDRP package"). MS referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The

Landlord confirmed receipt of the NoDRP package on October 11, 2021. I find that the Landlord was served with the NoDRP package for this hearing on October 11, 2021 in accordance with Section 82(1)(c) of the Act.

MS served the Landlord the evidence for her NoDRP package via Canada Post registered mail on January 7, 2022. MS referred me to the Canada Post registered mail tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. The Landlord confirmed receipt of the Tenant's evidence package on January 19, 2022. I find that the Landlord was served with the Tenant's evidence package on January 19, 2022 in accordance with Section 81(c) of the Act.

### Preliminary Matter

RTB Rules of Procedure 4.2 allows for amendments to be made in circumstances where the amendment can reasonably be anticipated. In the Tenant's application, the Tenant named the Landlord, not by the business name, but by using the Landlord's Agent's name. In the hearing, the Landlord's Agent provided the business name for the Landlord which is different than the name in the tenancy agreement in this matter. I asked the parties if I had their agreement to amend the Landlord's party name in the application. All parties agreed, and the correct Landlord business name is noted in the style of cause of this decision.

If an amendment to an application is sought at a hearing, an Amendment to an Application for Dispute Resolution need not be submitted or served. On this basis, I accept that the Landlord is properly named as the current business name and not the Landlord's Agent's name. I amended the Landlord's name and it is reflected in this decision.

### Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession of the property site?
3. Is the Tenant entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties agreed that this periodic tenancy began in June 2012. Monthly rent is \$824.00 payable on the first day of each month.

The reasons stated on the One Month Notice why the Landlord was ending the tenancy were because:

1. 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;
2. the tenant
  - has failed to comply with a material term, and
  - has not corrected the situation within a reasonable time after the landlord gives written notice to do so;
3. the tenant knowingly gives false information about the manufactured home park to a prospective tenant or purchaser viewing the manufactured home park;

Additional details noted for cause to end this tenancy are “*Owner is in Breach of Park Agreement. Letter given to owner Aug 18, 2021 to remove small shed as she has 2 sheds on the property. Given til Aug. 31, 2021. Shed exterior does not complement home. Has 3 Pets. Only 1 Pet allowed. Given till Aug. 31/ to find homes for 2 Pets. 1 Dog 2 Cats. Owner signed Pet Agreement stating she only had 1 Dog thus giving false information.*”

The effective date of the One Month Notice was October 31, 2021.

CS testified that #11 of the park regulations, and #5 of the Guidelines that are part of the regulations to the tenancy agreement state:

#### *Regulations*

*11. One pet may be allowed on written permission of the management but must be limited to a maximum height of 14 inches or 12 pounds, whichever is smaller. Pets must be controlled at all times, and will not be allowed to create*

*a nuisance or a hazard to other tenants and when on common property shall be on a leash not exceeding 6 feet in length.*

*Guidelines*

*5. Storage sheds outside the home will be allowed provided that they are placed to the rear of the lot and must be completed within 60 days from start of construction. They may not exceed 7' x 8' and 8' in overall height, and must be finished on the exterior in such a manner that they complement the home, subject to management approval.*

CS stated even though the guideline says “sheds”, that covers everyone in the park.

The Landlord sent the Tenant a letter dated August 18, 2021 advising that an inspection had been done on August 11, 2021 on the outside area of the Tenant's home. The letter states there is an issue that is a “*breach of your Park Agreement and Residential Tenancy Branch Rules and Regulations.*” It lists that the Tenant has two sheds, and the park agreement states residents may only have one shed. The Landlord requested the smaller shed of the two must be removed immediately. The letter did not provide a date when this second shed must be removed. The letter also listed that the Tenant was in breach of a Pet Agreement signed by the Tenant. The Landlord wrote the Tenant has three pets where she is only allowed to have one pet. She was to remove two pets by August 31, 2021.

CS notes that the tenancy agreement states that “*All breaches of the accommodation rules to be remedied within ninety (90) day of written notice by Landlord.*”

CS stated that the false information the Tenant gave was to the Landlord about her pet situation and not to a respective tenant or purchaser who was viewing the manufactured home park.

The Tenant testified that she has been living in the park over nine years and the sheds were built on the property before she moved in. She is requesting that her two sheds be grandfathered in. The Tenant points out that the August 18, 2021 letter does not specify that the smaller shed is uncomplimentary to her home. The Tenant painted the smaller shed orange. The Tenant states she only has one dog in the rental unit. She did testify that two cats have been rehomed in the first week of September 2021.

## Analysis

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. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 40 of the Act is the relevant section for this matter. It states:

### ***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:*

...

(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;*

...

(i) *the tenant knowingly gives false information about the manufactured home park to a prospective tenant or purchaser viewing the manufactured home park;*

(2) *A notice under this section must end the tenancy effective on a date that is*

(a) *not earlier than one month after the date the notice is received, and*

(b) *the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

(3) *A notice under this section must comply with section 45 [form and content of notice to end tenancy].*

- (4) *A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

...

The Landlord served the One Month Notice on the Tenant on September 28, 2021. The One Month Notice complied with the form and content requirements of Section 45 of the Act. The Tenant applied for dispute resolution on September 28, 2021 which is within the 10 days after the date the Tenant received the One Month Notice.

The Landlord did not provide evidence about the tenant not repairing damage to the manufactured home site. As well the Landlord testified that the Tenant did not knowingly give false information about the manufactured home park to a prospective tenant or purchaser viewing the manufactured home park. Accordingly, I find these claims in the Landlord's One Month Notice are unfounded and I cancel this aspect of the Landlord's claims.

RTB Policy Guideline #8 - Unconscionable and Material Terms states that a Landlord can end a tenancy agreement for breaching a material term of that agreement. The Guideline 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. (emphasis mine)*

Landlord informed the Tenant in writing on August 18, 2021 about a breach of a material term of her tenancy agreement. The letter set out two problems:

1) Too many pets: The Tenant testified that the two cats she had in her rental unit were rehomed the first week of September 2021. I find that the Tenant corrected this breach within the required deadline timeframe, accordingly, I cancel this part of the Landlord's application.

2) Too many sheds: The Landlord wrote that the Tenant has one too many sheds on the property and that one must be removed. The Landlord specified that the smallest shed seen from the street must be removed "immediately" as per the Owner's instructions. I find that a deadline of "immediately" is unspecific and unreasonable as a simple dictionary definition of the word means 'at once; instantly'. The Policy Guideline sets out that a deadline must be included in the letter, and that the deadline must be reasonable. I also note that the Landlord did not expressly state that by not fixing the problem, the Landlord would end the tenancy. I do find that the Landlord fully relies on the materiality of this term – one shed rule; however, I do wonder about its importance, as both sheds have been staples on the property since before the Tenant moved in. I find, based on a balance of probabilities that the Landlord has not proven that the one shed rule is a material term in this park's tenancy agreement, and accordingly I cancel the Landlord's One Month Notice. The tenancy shall continue until ended in accordance with the Act.

As the Tenant is successful in her claim, she is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 65(2) of the Act, withhold \$100.00 from next month's rent due to the Landlord.

### Conclusion

The Tenant's application to cancel the Landlord's One Month Notice is granted.

The Tenant may withhold \$100.00 from next month's rent to recover her application 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 Act.

Dated: February 28, 2022

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Residential Tenancy Branch