



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC OLC LRE RR MNDCT FFT**

### Introduction

This hearing was convened as a result of the Tenants' application for dispute resolution ("Application") under the *Manufactured Home Park Tenancy Act* (the "Act") for:

- cancellation of a One Month for Cause dated May 11, 2022, pursuant to sections 40 and 47;
- an order that the Landlords comply with the Act, the Manufactured Home Park Tenancy Regulations ("Regulations") and/or tenancy agreement pursuant to section 55;
- an order to suspend or set conditions on the Landlords' right to enter the home site pursuant to section 63;
- an order to allow the Tenants to reduce rent for repairs, services or facilities agreed upon but not provided by the Landlords pursuant to section 58;
- an order to seek a monetary order for compensation from the Landlords pursuant to section 60; and
- authorization to recover the filing fee of the Application from the Landlords pursuant to section 65.

The two Landlords ("CL" and "PL"), the Landlords' legal counsel ("CN") and the two Tenants ("CH" and "RH") attended the participatory hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I informed the parties that the *Residential Tenancy Branch Rules of Procedure* ("RoP") prohibit persons from recording dispute resolution hearings and, if anyone was recording the hearing, to immediately stop recording the proceeding.

CH stated the Tenants served the Notice of Dispute Resolution Proceeding and some of the Tenants' evidence (collectively the "NDRP Package") on each of the Landlords by registered mail on June 10, 2022. CN acknowledged the Landlords received the NDRP

Packages by registered mail. I find the NDRP Packages were served on the Landlords in accordance with the provisions of sections 81 and 82 of the Act.

Preliminary Matter – Service of Tenant’s Amendment on Landlord

CH stated the Tenants completed and filed an amendment (“Amendment”), dated September 21, 2022, with the Residential Tenancy Branch. The Amendment made additional claims for (i) an order for compensation for monetary loss or other money owed in the amount of \$2,972.43; (ii) a reduction in rent of \$1,200.00 for repairs, services or facilities agreed upon but not provided by the Landlord; and (iii) an order that the Landlords comply with the Act, Regulations and/or tenancy agreement collectively (the “Amendment Claims”). CH stated the Amendment was served on the Landlords by registered mail on September 21, 2022. Pursuant to section 83 of the Act, the Landlords were deemed to have received the Amendment on September 26, 2022. Rule 4.6 of the RoP states:

**4.6 Serving an Amendment to an Application for Dispute Resolution**

As soon as possible, copies of the Amendment to an Application for Dispute Resolution form and supporting evidence must be produced and served upon each respondent by the applicant in a manner required by section 89 of the Residential Tenancy Act or section 82 of the Manufactured Home Park Tenancy Act and these Rules of Procedure.

The applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Amendment to an Application for Dispute Resolution form and supporting evidence as required by the Act and these Rules of Procedure.

In any event, a copy of the amended application and supporting evidence should be served on the respondents as soon as possible and must be received by the respondent(s) *not less than 14 days before the hearing*.

[emphasis in italics added]

For the purposes of calculating days, the definitions set out in the RoP states that:

## Days

- a) If the time for doing an act in relation to a Dispute Resolution proceeding falls or expires on a holiday, the time is extended to the next day that is not a holiday.
- b) If the time for doing an act in a government office (such as the Residential Tenancy Branch or Service BC) falls or expires on a day when the office is not open during regular business hours, the time is extended to the next day that the office is open.
- c) *In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days, weeks, months or years, the first and last days must be excluded.*
- d) In the calculation of time not referred to in subsection (c), the first day must be excluded and the last day included.

[emphasis in italics added]

The Amendment was not served on the Landlords at least 14 days before the hearing. As such, the Amendment was not served in accordance with the provisions of Rules 4.6 of the RoP. Based on the foregoing, I find that I cannot consider the Tenant's claims set out in the Amendment at this hearing. The Tenants have the option of making a new application for dispute resolution to make the Amendment Claims.

### Preliminary Matter – Service of Tenant's Additional Evidence on Landlord

CH stated the Tenants served additional evidence ("Additional Evidence") on the Landlords by registered mail on September 21, 2022. Pursuant to section 83 of the Act, the Landlords were deemed to have received the Amendment on September 26, 2022. Rules 3.14 and 3.17 of the RoP state:

#### **3.14 Evidence not submitted at the time of Application for Dispute Resolution**

Except for evidence related to an expedited hearing (see Rule 10), documentary and digital evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch directly or through a Service BC Office not less than 14 days before the hearing. In the event that a piece of evidence is not available when the applicant submits and serves their evidence, the arbitrator will apply Rule 3.17.

### **3.17 Consideration of new and relevant evidence**

Evidence not provided to the other party and the Residential Tenancy Branch directly or through a Service BC Office in accordance with the Act or Rules 2.5 [Documents that must be submitted with an Application for Dispute Resolution], 3.1, 3.2, 3.10.5, 3.14 3.15, and 10 may or may not be considered depending on whether the party can show to the arbitrator that it is new and relevant evidence and that it was not available at the time that their application was made or when they served and submitted their evidence.

The arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party or result in a breach of the principles of natural justice.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The arbitrator must apply Rule 7.8 [Adjournment after the dispute resolution hearing begins] and Rule 7.9 [Criteria for granting an adjournment].

The Tenants served the Additional Evidence less than 14 clear days before the hearing. As such, service of the Additional Evidence did not comply with the requirements of Rule 3.14. I have reviewed the additional evidence and find that it was all submitted in support of the Amendment Claims. As I will not be considering the Amendment Claims in this hearing, it is unnecessary for me to consider whether it is new and relevant evidence. As such, I will not accept the Additional Evidence into evidence for this hearing.

#### **Preliminary Matter – Severance and Dismissal of Tenants' Claims**

At the outset of the Original Hearing, I observed the Application included a claim for an order to suspend or set conditions on the Landlords' right to enter the home site (the "Other Claim").

Rule 2.3 of the Rules states:

### **2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

Where a claim or claims in an application are not sufficiently related, I may dismiss one or more of those claims in the application that are unrelated. Hearings before the RTB are generally scheduled for one hour and Rule 2.3 is intended to ensure disputes can be addressed in a timely and efficient manner.

This hearing was scheduled for one hour. At the outset of the Original Hearing, I advised the parties the primary issue in the Tenant's Application was whether the tenancy would continue or end based on the 1 Month Notice and whether the Tenants were entitled to the return of the filing fee of the Application. Accordingly, I find the Other Claim was not sufficiently related to the primary issue of whether the 1 Month Notice would be cancelled and whether the Tenants were entitled to recover the filing fee of the Application. Based on the above, I will dismiss the Other Claim with or without leave, depending upon whether the 1 Month Notice is set aside or, alternatively, the Landlord is granted an Order of Possession for the rental unit.

### Issues to be Decided

- Are the Tenants entitled to cancellation of the 1 Month Notice?
- Are the Tenants entitled to recover the filing fee of the Application from the Landlords?
- If the Tenants are not entitled to cancellation of the 1 Month Notice, are the Landlords entitled to an Order of Possession pursuant to section 48(1) of the Act?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Application and my findings are set out below.

The parties agreed the tenancy commenced on November 23, 2011 with rent of \$185.00 payable on the 1<sup>st</sup> day of the month. The parties agreed the rent was increase pursuant to a Notice to Increase Rent to \$227.36 per month.

CN stated the Landlords served the 1 Month Notice on the Tenant's door on February 27, 2022. CH acknowledged the Tenants received the 1 Month Notice. CN acknowledged the 1 Month Notice did not comply with the requirements of the Act. CN stated the Landlords consent to the cancellation of the 1 Month Notice.

### Analysis

Section 52 of the Act states:

- 52** *In order to be effective, a notice to end a tenancy must be in writing and must*
- (a) *be signed and dated by the landlord or tenant giving the notice,*
  - (b) *give the address of the rental unit,*
  - (c) *state the effective date of the notice,*
  - (d) *except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy,*
  - (d.1) *for a notice under section 45.1 [tenant's notice: family violence or long-term care], be accompanied by a statement made in accordance with section 45.2 [confirmation of eligibility], and*
  - (e) *when given by a landlord, be in the approved form.*

[emphasis added in italics]

I have examined the 1 Month Notice and find the notice was made on an obsolete form of RTB-33 that does not require the provision of details on the causes listed by the Landlord for ending the tenancy nor does it provide the more details information for landlords and tenants that the current RTB-33 provides. As such, I find the 1 Month Notice does not comply with the form and content requirements of section 52. CS acknowledged the Landlords did not serve the Tenants with the form of RTB-33 that is currently prescribed by the Director of the Residential Tenancy Branch. CS stated the Landlords consent to the cancellation of the 1 Month Notice. As such, I order the 1 Month Notice to be cancelled. The tenancy continues until ended in accordance with the Act.

As the tenancy continues, I dismiss, with leave to reapply the Other Claim. As such, the Tenants have the option of making another application for dispute resolution proceeding to make the Other Claim.

As the Tenants have been successful in the Application, I award the Tenants the filing fee of \$100.00 for the Application pursuant to section 65(1) of the Act. Pursuant to section 65(2) of the Act, I authorize the Tenants to withhold \$100.00 from their monthly rent on a one-time basis in satisfaction of this amount. The Landlords may not serve the Tenants with a Ten Day Notice for Unpaid Rent and/or Utilities when the Tenants make the \$100.00 deduction from their rent.

### Conclusion

The 1 Month Notice is cancelled. The tenancy continues until ended in accordance with the Act.

The Tenants are awarded the filing fee of \$100.00 for the Application. The Tenants are authorized to withhold this amount from their monthly rent on a one-time basis in satisfaction of this amount.

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 6, 2022

---

Residential Tenancy Branch