



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KAHANA HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **FINAL DECISION**

Dispute Codes      OPC, ORL, FFL;   OLC, CNC, RP, LRE

### Introduction

Both hearings dealt with the landlord's application, filed on July 8, 2022, pursuant to the *Manufactured Home Park Tenancy Act* ("Act") for:

- an order of possession for cause, pursuant to section 48;
- an order requiring the tenants to follow Manufactured Home Park rules, pursuant to section 32; and
- authorization to recover the \$100.00 filing fee for its application, pursuant to section 65.

Both hearings also dealt with the tenants' application, filed on June 8, 2022, pursuant to the *Act* for:

- an order requiring the landlord to comply with the *Act*, *Manufactured Home Park Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 55;
- cancellation of the landlord's One Month Notice to End Tenancy for Cause, dated May 30, 2022 ("1 Month Notice"), pursuant to section 40;
- an order requiring the landlord to complete repairs to the rental unit, pursuant to section 26; and
- an order restricting the landlord's right to enter the rental unit, pursuant to section 63.

The "first hearing" occurred on October 25, 2022, and lasted approximately 22 minutes from 9:30 a.m. to 9:52 a.m.

The "second hearing" occurred on November 7, 2022, and lasted approximately 24 minutes from 9:30 a.m. to 9:54 a.m. I monitored the teleconference line throughout the second hearing. I confirmed that the correct call-in numbers and participant codes were provided in the reconvened notice of hearing. I also confirmed from the teleconference

system that the landlord's agent and I were the only people who called into the second hearing.

The landlord's agent attended both hearings. Tenant TG ("tenant") attended the first hearing only, not the second hearing. "Tenant JJ" did not attend both hearings. Neither the tenants, nor any of their agents, attended the second hearing. At both hearings, all hearing participants were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

At both hearings, the landlord's agent confirmed his name and spelling. At the first hearing, the tenant confirmed her name and spelling. At both hearings, the landlord's agent provided his email address for me to send both decisions to the landlord. At the first hearing, the tenant provided her email address for me to send my interim decision and notice of reconvened hearing to both tenants.

At both hearings, the landlord's agent said that the landlord company ("landlord") named in the landlord's application, owns the rental unit, he provided the rental unit address, and stated that he is employed by the landlord as a manager. At both hearings, he said that he had permission to represent the landlord.

At the first hearing, the tenant stated that she had permission to represent tenant JJ (collectively "tenants").

Rule 6.11 of the Residential Tenancy Branch ("RTB") *Rules of Procedure ("Rules")* does not permit recordings of any RTB hearings by any participants. At the outset of the first hearing, the landlord's agent and the tenant both separately affirmed, under oath, that they would not record the first hearing. At the outset of the second hearing, the landlord's agent affirmed, under oath, that he would not record the second hearing.

At the first hearing, I explained the hearing process to both parties. I informed them that I could not provide legal advice to them. They had an opportunity to ask questions, which I answered. Neither party made any accommodation requests.

At the second hearing, I explained the hearing process to the landlord's agent. He had an opportunity to ask questions. He did not make any adjournment or accommodation requests.

Preliminary Issue - Adjournment of First Hearing

During the first hearing, I informed both parties that the first hearing on October 25, 2022 was adjourned. I noted the following in my interim decision at pages 2 and 3:

*At the outset of this hearing, the tenant requested an adjournment of this hearing for two weeks. She said that tenant JJ's father, who is her father-in-law was in the hospital, and he may not have long to live. She stated that she only found out about the hospitalization on the date before this hearing, from the care home. She claimed that she did not have enough time to obtain medical records to provide proof for this hearing. She maintained that she called the RTB on the day before this hearing and was told that she could attend this hearing and request an adjournment. She explained that she could not attend this hearing alone because she needed tenant JJ to provide evidence, since she was not personally present during many tenancy events. She stated that she also needed support from tenant JJ at this hearing. She claimed that she was supposed to be with tenant JJ at the hospital, but she had to attend this hearing instead.*

...

*I find that an adjournment of this matter would provide a fair opportunity for tenant JJ to attend this hearing and provide submissions regarding the tenants' application and in response to the landlord's application. Tenant JJ is named as a tenant-party in both parties' applications. I accept the testimony of the tenant, that tenant JJ's father was admitted to the hospital on the day before this hearing, the tenants did not have sufficient time to provide medical evidence prior to this hearing, and tenant JJ wanted to attend this hearing in order to provide testimony and evidence, since he has personal knowledge of tenancy events, as compared to the tenant. Although the landlord's agent opposed the tenant's adjournment request, I find that the prejudice to the landlord is minimal, even though this is an urgent order of possession claim, as the tenant requested a short two-week adjournment.*

By way of my interim decision, dated October 25, 2022, I adjourned the tenants' application to the second hearing date of November 7, 2022. During the second hearing, the landlord's agent affirmed that the above information was correct.

At the first hearing, I notified both parties that they would be sent copies of my interim decision and notice of reconvened hearing with the second hearing date information,

from the RTB. At the second hearing, the landlord's agent confirmed receipt of my interim decision and notice of reconvened hearing.

According to the online RTB dispute access site notes, both tenants were separately contacted by an RTB information officer by telephone on October 25, 2022, regarding the reconvened hearing date of November 7, 2022. A voicemail was left for the tenant on October 25, 2022, referencing the reconvened hearing date and an email sent by the RTB with the interim decision and notice of reconvened hearing. The tenants were sent copies of my interim decision and notice of reconvened hearing from the RTB on October 25, 2022, by email to the tenant's email address provided by the tenant at the first hearing.

I find that the tenants failed to attend the second hearing, despite being repeatedly contacted by the RTB by telephone and email on October 25, 2022. I find that the tenants failed to attend despite being sent an email from the RTB on October 25, 2022, with the interim decision and notice of reconvened hearing. I adjourned the first hearing according to the tenants' request for two weeks, from October 25 to November 7, 2022, and the tenants still failed to attend the second hearing.

#### Preliminary Issue – Service of Documents

At the first hearing, both parties confirmed that they did not receive the other party's application for dispute resolution hearing package. They both claimed that they only knew about the first hearing because they filed their own applications and were provided with notices of hearing with the phone numbers and access codes to call into the first hearing.

At the second hearing, I reviewed the following information, contained on page 4 of my interim decision, with the landlord's agent:

*I order both parties to serve the other party with their original application, notice of hearing, and original evidence by October 28, 2022, and to provide proof of service to confirm same.*

*Neither party is permitted to serve any further evidence, prior to the reconvened hearing. No witnesses are permitted to testify at the reconvened hearing. Neither party is permitted to file any new applications after this hearing date of October 25, 2022, to be joined and heard together with both parties' applications, at the reconvened hearing.*

The landlord's agent stated that he re-served both tenants with separate copies of the landlord's application for dispute resolution hearing package on October 25, 2022, by way of registered mail. The landlord provided two Canada Post receipts and confirmed both tracking numbers verbally during the hearing. In accordance with sections 82 and 83 of the *Act*, I find that both tenants were deemed served with the landlord's application on October 30, 2022, five days after each of their registered mailings.

The landlord stated that both tenants were served with a copy of the landlord's 1 Month Notice on May 30, 2022, by way of posting to the tenants' rental unit door. In accordance with sections 81 and 83 of the *Act*, I find that both tenants were deemed served with the landlord's 1 Month Notice on June 2, 2022, three days after its posting. In their application, the tenants claimed that they received the landlord's 1 Month Notice on May 30, 2022.

In my interim decision and pursuant to section 57(3)(c) of the *Act*, I amended the tenants' application to remove the name of the landlord's agent and to replace it with the name of the landlord as the landlord-respondent party. At the first hearing, the landlord's agent testified that the landlord owns the rental unit, and the landlord is named as a landlord-respondent party in the landlord's application. I found no prejudice to either party in making that amendment.

#### Preliminary Issue – Dismissal of Tenants' Application

Rule 7.3 of the *RTB Rules* provides as follows:

*7.3 Consequences of not attending the hearing: If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

In the absence of any evidence or submissions from the tenants at the second hearing, I order the tenants' entire application dismissed without leave to reapply.

Pursuant to section 48 of the *Act*, if I dismiss the tenants' application to cancel a 1 Month Notice, the landlord is entitled to an order of possession if the notice meets the requirements of section 45 of the *Act*.

### Issues to be Decided

Is the landlord entitled to an Order of Possession for cause?

Is the landlord entitled to an order requiring the tenants to follow Manufactured Home Park rules?

Is the landlord entitled to recover the filing fee paid for its application?

### Background and Evidence

While I have turned my mind to the landlord's documentary evidence and the testimony of the landlord's agent at the second hearing, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the landlord's claims and my findings are set out below.

The landlord's agent testified regarding the following facts at the second hearing. This tenancy began on November 10, 2021. Monthly rent in the current amount of \$365.00 is payable on the first day of each month. The tenants own their own manufactured home ("home") and rent the manufactured home site ("site") located in the manufactured home park ("park"), from the landlord. The landlord owns the site and the park. The tenants continue to reside at their home on the site in the park.

The landlord's agent stated the following facts at the second hearing. The landlord seeks an order of possession based on the 1 Month Notice. The 1 Month Notice indicates an effective move-out date of June 30, 2022. The notice was issued for the following reasons:

- *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;*
  - *put the landlord's property at significant risk.*
- *Tenant has not done required repairs of damage to the unit/site.*
- *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 agent testified regarding the following facts at the second hearing. The tenants' yard is in "constant turmoil." The landlord provided pictures of the tenants' yard, as it is only half clean. There are dumpsters at the yard because it is a "junkyard."

The tenants put a landscape fence in the yard. There are shavings all over the place and it is a fire hazard as per the "fire people." The tenants were asked to clean up and it is a constant battle for them to clean the yard. The tenants had a yard sale, which is not permitted in the park, unless they are moving. The landlord asked a number of times, but the tenants think that the park rules do not apply to them. The landlord has only received rent on time twice from the tenants. The landlord has served papers because the tenants do not comply with anything in the park. The tenants have domestic disputes outside and use saws after quiet time.

The landlord's agent stated the following facts at the second hearing. The police have attended at the tenants' home a number of times. The tenants speed through the park and have threatened other occupants. Other occupants in the park are scared of the tenants and feel intimidated by them. Other occupants have said that they would move out of the park, if they could afford to do so, due to the tenants' behaviour. The landlord provided a 1 Month Notice to the tenants on September 7, as the tenants were caught once for speeding and once for their big dog, which is a bull mastiff. The other occupants will not walk their own dogs because they are scared of the tenants' big dog, who has left his chain and chased their dogs. Bylaw officers and police have been at the tenants' home and site for their dog because the tenants do not comply. The tenants' behavior is threatening to other occupants. One other occupant did not go into work the next day because of it. The police were called because they thought the tenants had a gun.

### Analysis

The tenants made an application on June 8, 2022, pursuant to section 40(4) of the *Act* within ten days of being deemed to have received the 1 Month Notice on June 2, 2022. However, neither the tenants, nor any agents on their behalf, appeared at the second hearing to provide their testimony, evidence or submissions. As noted above, I dismissed the tenants' entire application, including their application to cancel the landlord's 1 Month Notice.

I am satisfied that the landlord issued the 1 Month Notice for a valid reason. I find that the tenants seriously jeopardized the health, safety, and lawful right of other occupants and the landlord in the park.

I accept the affirmed, undisputed testimony of the landlord's agent at the second hearing and the undisputed evidence of the landlord. I accept that other occupants in the park have complained, and police have attended at the tenants' home at the site in

the park, multiple times to deal with complaints regarding the tenants' behaviour, threats, the tenants speeding in the park, and the tenants' dog. The landlord provided copies of warning letters to the tenants regarding their behaviour, from March to May 2022, which were referenced in the details of cause in the 1 Month Notice. The landlord also provided photographs of the condition of the tenants' home at the site in the park.

As I have found one of the reasons on the 1 Month Notice to be valid, I do not need to examine the other reasons.

In accordance with section 40(5) of the *Act*, this tenancy ended on July 31, 2022, the corrected effective date on the 1 Month Notice. In this case, this required the tenants and anyone on the premises to vacate the premises by July 31, 2022. As this has not occurred, I find that the landlord is entitled to a two (2) day order of possession against the tenants, pursuant to section 48 of the *Act*. The effective date of July 31, 2022, on the notice, has long passed. I find that the landlord's 1 Month Notice complies with section 45 of the *Act*.

Since I have ended this tenancy, I am not required to make a decision regarding the landlord's application for an order requiring the tenants to follow Manufactured Home Park rules, since that claim relates to an ongoing tenancy only. This portion of the landlord's application is dismissed without leave to reapply.

As the landlord was partially successful in its application, I find that the landlord is entitled to recover the \$100.00 filing fee from the tenants. I issue a monetary order to the landlord for same.

### Conclusion

The tenants' entire application is dismissed without leave to reapply.

I grant an Order of Possession to the landlord effective two (2) days after service on the tenant(s). Should the tenant(s) or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I issue a monetary order in the landlord's favour in the amount of \$100.00 against the tenant(s). The tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.



The remainder of the landlord's application is dismissed without leave to reapply.

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: November 07, 2022

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Residential Tenancy Branch