



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNC, OLC, FFT**

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the Residential Tenancy Act (“RTA”) for orders as follows:

- cancellation of the landlord’s One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47
- reimbursement of the filing fee pursuant to section 72

Both parties attended the hearing with the landlord JL appearing as well as an advocate KL. The tenant KD appeared along with advocate KC. All parties were given a full opportunity to be heard, to present testimony, to make submissions, and to call witnesses.

Both parties confirmed they were not recording the hearing pursuant to Rule of Procedure 6.11. The parties were affirmed.

The tenant confirmed receipt of the One Month Notice dated September 20, 2022. Pursuant to section 89 of the Act the tenant is found to have been served with this notice in accordance with the RTA.

The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the RTA.

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

1. Is the One Month Notice valid and enforceable against the tenant?
2. Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

The tenancy commenced October 1, 2020, for an initial one year fixed term and the tenancy continued month to month thereafter. Rent is currently \$800.00 per month due on the first day of the month. No security deposit was paid. The tenant still occupies the property.

The One Month Notice was issued under RTA with an effective date of March 1, 2023. The landlord stated that he needed to remove the tenant in order to comply with an agreement between himself and the Sunshine Coast Regional District ("SCRD"). He characterized the notice given to the tenant as a five month notice due to the effective date. The landlord stated that the area on his property where the tenant is renting was created during covid by himself to accommodate short term vacation rentals and was advertised as such. The area consists of several pads, gravel on top of dirt, and the landlord ran services such as utilities to the pads. The area was never intended to accommodate a long term living arrangement. The landlord produced the compliance agreement between himself and the SCRD in evidence.

### Legislation

The tenant took the position that the RTA does not apply to this situation and therefore the One Month Notice is not valid. The tenant owns the trailer parked on the pad and is only renting the pad and services supplied by the landlord. The tenant additionally has erected a playground for her child on the area she rents, which is a permanent structure. Tenant's advocate referred to RTB Policy Guideline 9 and quoted the following excerpt:

Under the MHPTA, a manufactured home is defined as a structure, other than a float home, whether or not ordinarily equipped with wheels, that is

- designed, constructed or manufactured to be moved from one place to another by being towed or carried, and
- used or intended to be used as living accommodation.

The tenant states that although her structure has wheels, that is not determinative of the issue according to the Policy Guidelines. Her structure has been parked on the pad since October 2020 and has not been moved since. She uses this structure as her primary living accommodation. The One Month Notice therefore should have been issued under the Manufactured Home Park Tenancy Act ("MHPTA"). The One Month Notice issued under the RTA is therefore invalid.

The landlord's position is that the MHPTA does not apply to this tenancy because the area where the tenant is renting the pad is not in a manufactured home park. Further the tenant's structure is more properly characterized as a travel trailer which can be easily moved off site. The playground erected by the tenant can easily be removed and is therefore not permanent.

### One Month Notice

The reason given in the One Month Notice for ending the tenancy is listed in section 47(k) of the RTA:

(k)the rental unit must be vacated to comply with an order of a federal, British Columbia, regional or municipal government authority;

The landlord's position is that the compliance agreement, which the landlord produced in evidence, is an order of a government authority. The landlord attended a meeting with the SCRD and was advised that the compliance agreement constituted an order.

The tenant stated that a compliance agreement is not an order, but at most is a precursor to an order, in that if the landlord was not found to be in compliance, a further government or potentially a court would then make an order that could be enforced.

### Analysis

The arguments presented by the parties regarding jurisdiction are moot because ground upon which the landlord is relying in issuing the One Month Notice is to comply with a government order is present on the RTB#33 Form used by the landlord and is applicable to both the MHPTA and the RTA. The question to be answered is whether the compliance agreement between the landlord and the SCRD constitutes a government order. Further, I note the landlord used an old copy of the RTB#3 Form from 2016 which did not contain the second page identifying the reasons for the issuance of the notice. This fails the requirements of section 52(d) of the Act.

Finally, the compliance agreement does not refer to an order, use the word order or show that the SCRD has ordered the landlord to do anything. It is evidence of an agreement between the parties that the landlord will come into compliance with the bylaws regarding use of the property. Although the landlord was advised that the

compliance agreement constitutes an order, I find that in absence of evidence in writing that an order was made, the landlord has not satisfied his onus to establish that there is a government order requiring the unit to be vacated to comply with an order.

The tenant's application disputing the One Month Notice is granted. As the tenant was successful in her application, she is entitled to receive the filing fee for this application.

### Conclusion

The tenant's application is granted. The tenant may deduct \$100.00 from one month's future rent on a one time basis in recovery of the 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 *Residential Tenancy Act*.

Dated: December 19, 2022,

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Residential Tenancy Branch