



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **TT: CNC-MT MNDCT AAT LRE AS OLC FFT**  
                             **LL: OPC**

### Introduction

This hearing was reconvened by way of conference call in response to two applications for dispute resolution (collectively the “Applications”) made under the *Residential Tenancy Act* (the “Act”). In the first application for dispute resolution (“Tenant’s Application”), the Tenant seeks:

- an order to cancel a One Month Notice to End Tenancy for Cause dated July 13, 2022 (“1 Month Notice”) pursuant to section 40;
- an extension of time to make the Tenant’s Application pursuant to section 59(3);
- a monetary order for compensation from the Landlords pursuant to section 60;
- an order for the Landlords to allow the Tenant or the Tenant’s guests to access the home site pursuant to section 30;
- 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 Tenant to assign or sublet the home site pursuant to section 58;
- an order requiring the Landlords to comply with the Act, *Manufactured Home Park Tenancy Regulations* (“Regulations”) and/or tenancy agreement pursuant to section 55; and
- authorization to recover the filing fee for the Tenant’s Application from the Landlords pursuant to section 65.

In the second application for dispute resolution (“Landlords’ Application”), the Landlords seek:

- an Order of Possession based on cause pursuant to sections 40 and 48.

The original hearing of the Applications was held on December 29, 2022 (the “Original Hearing”). One of the Landlords (“GG”), the Landlords’ agent (“RO”), the Tenant and the Tenant’s advocate (“CL”) attended the Original Hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I explained the hearing process to the parties who did not have questions when asked. I told the parties they were not allowed to record the hearing pursuant to the *Residential Tenancy Branch Rules of Procedure* (“RoP”).

The Original Hearing was scheduled for a 60-minute period. However, by 57 minutes into the hearing, it became clear that the parties would not be able to complete their testimony and rebuttals. Pursuant to Rule 7.8 of the RoP, I adjourned the Original Hearing and issued a decision dated January 1, 2023 (“Interim Decision”). In the Interim Decision, I ordered that the parties were not permitted to serve, or submit to the Residential Tenancy Branch (“RTB”), any further evidence. The Interim Decision, and Notices of Dispute Resolution Proceeding for an adjourned hearing (“Adjourned NDRP”), scheduled for January 16, 2023 at 11:00 am (“Adjourned Hearing”), were served on the parties by the RTB.

None of the Landlords attended the Adjourned Hearing. I left the teleconference hearing connection open for the entire Adjourned Hearing, which ended at 11:16 am, in order to enable the Landlords to call into this teleconference hearing. The Tenant and CL attended the Adjourned Hearing and they were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes were provided in the Adjourned NDRP. I also confirmed from the teleconference system that the Tenant, CL and I were the only ones who had called into this teleconference.

At the Original Hearing, the Tenant testified she served her Notice of Dispute Resolution Proceeding (“Tenant’s NDRP”) on the Landlords registered mail on November 20, 2021. Although the Tenant could not find the Canada Post receipt or tracking number for service of the Tenant’s NDRP at the Original Hearing, I located it in her evidence after the Original Hearing. As such, I was able to confirm she served the Tenant’s NDRP on the Landlords by registered mail on November 20, 2021. Furthermore, GG acknowledged the Landlords received the Tenant’s NDRP. Based on the foregoing, I find the Tenant’s NDRP was served on the Landlords in accordance with section 81 and 82 of the Act.

At the Original hearing, the Tenant stated she served the Notice of Dispute Resolution Proceeding and her evidence (collectively the “Tenant’s NDRP Package”) for the Tenant’s Application on GG by registered mail on August 20, 2022. The Tenant provided the Canada Post tracking number for service of the Tenant’s NDRP Package on GG to corroborate her testimony. GG acknowledged he received the Tenant’s NDRP Package. Based on the foregoing, I find the Tenant’s NDRP Package was served on GG in accordance with the provisions of sections 81 and 82 of the Act.

At the Original Hearing, GG stated the Landlords served the Notice of Dispute Resolution Proceeding for the Landlords’ Application and their evidence (collectively the “Landlords’ NDRP Package”) on the Tenant by registered mail on September 2, 2022. GG provided the Canada Post tracking number for service of the Landlords’ NDRP Package on the Tenant to corroborate his testimony. The Tenant acknowledged receipt of the Landlords’ NDRP Package. I find the Landlords’ NDRP Package was served on the Tenant in accordance with the provisions of sections 81 and 82 of the Act.

At the Original Hearing, GG stated the Landlords served additional evidence on the Tenant’s door on December 14, 2022. Although KG stated he served the Landlords’ additional evidence on an occupant at the manufactured home located on the home site on December 14, 2022, the Tenant stated the Landlord’s additional evidence was posted on the door to her manufactured home. Based on the foregoing, I find the Landlords’ additional evidence was served on the Tenant in accordance with section 81 of the Act.

#### Preliminary Matter – Correction of Rental Address in Tenant’s Application

At the outset of the hearing, I noted the address of the home site stated in the Tenant’s Application was missing the street name. The Tenant made a request that I amend the Tenant’s Application to add the street name to the address of the home in the Tenant’s Application. GG did not object to the proposed amendment to the Tenant’s Application.

Rule 4.2 of the RoP states:

#### **4.2 Amending an application at the hearing**

In circumstances that can reasonably be anticipated, such as when the amount of rent owing has increased since the time the Application for Dispute Resolution was made, the application may be amended at the hearing. 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.

With the consent of GG, pursuant to Rule 4.2 of the RoP, I order that the Tenant's Application to be amended to insert the name of the street for the address of the home site.

#### Preliminary Matter – Amendment of Tenant's Claim

At the outset of the Original Hearing, I noted the 1 Month Notice stated the cause for ending the tenancy was because the Tenant had assigned or sublet the home site without the Landlord's written consent whereas the Tenant's Application stated the Tenant was disputing the 1 Month Notice on the basis of the end of employment. The Tenant stated that she has not been an employee of the Landlords and that her intention was to dispute the 1 Month Notice on the basis of cause. The Tenant requested that I amend the Tenant's Application to change her claim to a dispute of the 1 Month Notice on the basis of cause. GG did not object to the proposed amendment.

With the consent of GG, pursuant to Rule 4.2 of the RoP, I order the Tenant's Application to be amended to claim the Tenant is disputing the 1 Month Notice for cause.

#### Preliminary Matter – Request for Extension of Time to Make Tenant's Application

The Tenant's Application included a request for an extension of time to make the Tenant's Application. GG stated the 1 Month Notice was served on a person who appeared to reside at the home site on July 16, 2022.

Section 40(4) of the Act states:

- 40(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.

Pursuant to section 40(4), the Tenant had 10 Days to make the Application, being July 26, 2022. The records of the RTB disclose the Tenant made the Tenant's Application on July 25, 2022. As such, the Tenant made the Tenant's Application within the 10-day dispute period. Based on the foregoing, there is no need for the Tenant to seek an extension of time to make the Tenant's Application.

### Preliminary Matter – Severance and Dismissal of Tenant's Claims

The Tenant's Application included claims for (i) a monetary order for compensation from the Landlords; (ii) an order for the Landlords to allow the Tenant or the Tenant's guests to access the home site; (iii) an order to suspend or set conditions on the Landlords' right to enter the home site; (iv) an order to allow the Tenant to assign or sublet the home site; and (v) an order requiring the Landlords to comply with the Act, Regulations and/or tenancy agreement (collectively the "Tenant's Other Claims").

Rule 2.3 of the RoP 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. I find the Tenant's claims for an order to cancel the 1 Month Notice and authorization to recover the filing fee of the Tenant's Application to be the primary issues before me. As such, I will sever the Tenant's Other Claims from the Tenant's Application. After determining whether the 1 Month Notice should be cancelled, I will dismiss the Tenant's Other Claims, with or without leave to reapply to reapply, as appropriate.

### Preliminary Matter – Effect of Non-Attendance of Landlord at Hearing

As noted above, none of the Landlords attended the Adjourned Hearing. Rule 6.6 of the RoP states:

#### **6.6 The standard of proof and onus of proof**

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. In most circumstances this is the person making the application. However, in some

situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

The Tenant made the Tenant's Application to seek cancelation of the 1 Month Notice and the Landlords made the Landlords' Application to seek an Order of Possession for cause. As such, the Landlords must meet the burden of proving that, on a balance of probabilities, it is more likely than not that the 1 Month Notice is valid.

Rules 7.1, 7.3 and 7.4 of the RoP state:

### **7.1 Commencement of the dispute resolution hearing**

The dispute resolution hearing will commence at the scheduled time unless otherwise set by the arbitrator.

### **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 the party, or dismiss the application, with or without leave to re-apply.

### **7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given that none of the Landlords attended the Adjourned Hearing before it ended at 11:16 am, being more than 10 minutes after its commencement, I find the Landlords have not met the burden of proof that it is more likely than not that the 1 Month Notice is valid. As such, I order the 1 Month Notice to be cancelled without leave to reapply. The tenancy will continue until it is lawfully ended in accordance with the Act.

As the Tenant has been successful in the Tenant's Application, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 65(1) of the Act. Pursuant section 65(2) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlords when this deduction is

made. The Landlords may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

I dismiss the Tenant's Other Claims with leave to reapply. The Tenant has the option of making a new application for dispute resolution to make the Tenant's Other Claims.

### Conclusion

The 1 Month Notice is cancelled without leave to reapply. The tenancy will continue until it is lawfully ended in accordance with the Act.

The Tenant is ordered to deduct \$100.00 from next month's rent in satisfaction of his monetary award for recovery of the filing fee for the Tenant's Application.

The Tenant's Other Claims are dismissed with 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: January 22, 2023

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Residential Tenancy Branch