



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 0852494 BC LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, FFL, CNC

### Introduction

This proceeding dealt with a landlord's application for an Order of Possession for cause based on a One Month Notice to End Tenancy for Cause ("1 Month Notice") dated February 28, 2022. The landlord submitted an Amendment to an Application for Dispute Resolution seeking an Order of Possession based on a 1 Month Notice subsequently issued on August 31, 2022.

The hearing commenced on October 25, 2022 and both parties appeared and/or were represented. The hearing was adjourned to deal with service issues. An Interim Decision was issued and should be read in conjunction with this decision.

At the reconvened hearing, I confirmed the park manager delivered the landlord's complete package of materials on October 31, 2022 and the tenant's son, HF, confirmed receipt of the landlord's package. I also confirmed that the tenant did not submit/serve any rebuttal evidence and the tenant intended to provide her position orally during the hearing. The tenant stated she is hard of hearing and during the hearing HF did the majority of the speaking on behalf of the tenant.

Also at the reconvened hearing, the landlord's legal counsel raised a procedural matter. During the period of adjournment the tenant filed an Application for Dispute Resolution that was joined to the existing application before me. I determined the landlord had issued another 1 Month Notice to the tenant during the period of adjournment. The parties were in agreement that the tenant's joined application will remain joined to the landlord's application and if I were to uphold the oldest 1 Month Notice that is before me that it would be moot to reconvene the hearing to deal with the 1 Month Notices issued in August 2022 and October 2022. For reasons provided in this decision, I have upheld the 1 Month Notice dated February 28, 2022 and I find it unnecessary to reconvene the hearing to deal with the subsequent notices. Accordingly, the tenant's request for

cancellation of the most recent 1 Month Notice is moot and the tenant's application is dismissed.

Issue(s) to be Decided

1. Is the 1 Month Notice dated February 28, 2022 enforceable? If so, is the landlord entitled to an Order of Possession and when should the Order of Possession take effect?
2. Award of the filing fee.

Background and Evidence

The tenancy started on September 15, 2010. The monthly rent is currently set at \$456.96 payable on the first day of every month.

The landlord issued the subject 1 Month Notice on February 28, 2022 and it was served to the tenant's son, HF, on that same day by the park manager. HF is an adult who resides at the rental site with the tenant and signed a receipt acknowledging receipt of the 1 Month Notice. The tenant did not file to dispute this notice and has not vacated the rental unit.

The reasons for ending the tenancy, as stated on the February 28, 2022 1 Month Notice are as follows:

**Reason for this One Month's Notice to End Tenancy: (check all boxes that apply)**

- ☐ Tenant has allowed an unreasonable number of occupants in the unit/site/property/park.
- ☐ Tenant is repeatedly late paying rent
- ☒ Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
  - ☐ significantly interfered with or unreasonably disturbed another occupant or the landlord.
  - ☒ seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
  - ☒ put the landlord's property at significant risk
- ☐ Tenant's rental unit/site is provided by the employer to the employee to occupy during the term of employment and employment has ended.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.
- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord.
- ☐ Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
- ☒ Tenant has not done required repairs of damage to the unit/site/property/park
- ☒ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

In the Details of Cause, the landlord wrote:

**Details of Causes(s): Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.**

Details of the Event(s):

The mobile home has an addition that a structural engineer has deemed to be hanging too far over an embankment that has settled, with no ground below it for support. There is a road below the addition. If the addition were to fall, it could land on the road, and may cause serious injury to the tenant or other residents of the park. The landlord has been advised by an engineer that the addition is a significant risk, and that it needs to be removed. The landlord has informed the tenant multiple times, and the tenant has refused to remove the addition. The landlord gave formal notice to carry out the recommendations of the structural engineer to relevel her mobile home, to reinforce the addition support posts and to have assessed and redirect roof drainage pipes that drain onto the embankment. The landlord gave a formal notice to the tenant that she was in breach of the tenancy agreement by not carrying out the recommendations and the landlord gave a reasonable amount of time to undertake them. The tenant did not do any of these recommendations.

Since the tenant has yet to vacate the rental unit and the tenant indicated she wishes to continue the tenancy I asked for a reason the tenant did not file to dispute the 1 Month Notice. HF responded that they had already been to a dispute resolution proceeding concerning this matter. HF also stated that he had taken so many videos of the issue and he had essentially given up.

The parties had a previous dispute resolution proceeding to deal with the tenant's request to cancel a 1 Month Notice was issued on June 29 2021 (file number referenced on the cover page of this decision). In the Details of Cause on the June 29, 2021 1 Month Notice, the landlord identified two issues: the conduct of HF toward the landlord; and, the tenant's refusal to remove the addition on the manufactured home. That previous proceeding was held over two dates: in November 2021 and March 2022. The Arbitrator granted the tenant's request for cancellation in a decision also issued in March 2022.

The landlord's lawyer submitted that the subject 1 Month Notice was issued after the landlord obtained further reports from two engineers: a structural engineer and a geotechnical engineer in November 2021, further testing was performed by a hydrologist, and the tenant was given further warning letters after the additional engineer reports were received. The landlord submitted the unsupported addition/solarium is unsupported and cracks are visible in the manufactured home which indicates the unsupported addition is causing stress to the manufactured home. The landlord is concerned the addition may fall off the manufactured home and down the bank where a road is situated. In an effort to mitigate the risk, the landlord issued further warning letters to the tenant in December 2021 and January 2022. The landlord required the tenant to:

- Remove the solarium or at least do not use the solarium until it was properly supported;
- Have the downspouts assessed and redirected so that the water was not contributing to the slope erosion;
- Temporarily support the columns on the covered walkway; and,
- Re-level the manufactured home.

The landlord submitted that the tenant did not comply with the above so the landlord issued the subject 1 Month Notice. The tenant acknowledged she did not remove the solarium, citing the lack of funds to do so. HF acknowledged they did not assess and re-direct the downspouts as they were of the view that the amount of rainfall coming from the downspouts would be a minor contribution to slope erosion. HF also stated that he could not find anybody willing to re-level the manufactured home while the slope was unstable.

Both parties provided consistent statements that the manufactured home, and especially its solarium, are no longer sufficiently supported due to the erosion of the slope on the rental site. However, the parties did not agree as to the cause of the erosion. The landlord provided engineering reports in an effort to support of the

landlord's reasons for the erosion. HF had made enquiries with respect to obtaining their own engineer's report, but the cost was prohibitive and they did not obtain one.

Although the tenant did not dispute the subject 1 Month Notice, I noted the landlord did not apply for an Order of Possession until June 2, 2022. I asked for reasons the landlord delayed in filing for an Order of Possession. The landlord's legal counsel responded that the previous proceeding was still underway in March 2022 and if the landlord succeeded on that prior 1 Month Notice it would have been unnecessary to file for an Order of Possession. The previous Arbitrator issued a decision in March 2021 and the landlord's legal counsel requested the decision be changed by way of an Application for Correction, which was dismissed in April 2022. The landlord's legal counsel stated that she was unavailable to meet with the landlord in May 2022 and then this Application for Dispute Resolution was filed in early June 2022.

As for the 1 Month Notices issued subsequent to the subject 1 Month Notice, the landlord's legal counsel submitted that they were issued for different reasons than that on the subject 1 Month Notice.

I canvassed the parties with respect to an effective date if the landlord were to succeed in obtaining an Order of Possession. The landlord was willing to give the tenant until the end of April 2023 to vacate. HF requested six months or longer to vacate.

### Analysis

I have reviewed the subject 1 Month Notice and I find that it is in the approved form and is duly completed by the landlord. I am also satisfied it was duly served in a manner that complies with section 88 of the Act on February 28, 2022.

The subject 1 Month Notice indicates the reason, or one of the reasons, for ending the tenancy is because the tenant did not perform repairs and maintenance to the manufactured home, despite multiple written notices to do so, and the failure to do so is seriously jeopardizing the health or safety of other occupants should the addition fall off the manufactured home. This is a basis for ending a tenancy under section 40(1)(c)(ii) of the Act.

Although the parties were in dispute as to reasons and responsibility for the eroding slope, the tenant did not file to dispute the 1 Month Notice dated February 28 2022 and if the tenant had filed to dispute the 1 Month Notice then I would fully consider the positions of both parties with respect to the cause. However, where a tenant does not

dispute a 1 Month Notice, the tenant is “conclusively presumed” to accept that the tenancy shall end under section 40 of the Act.

Section 40 of the Act provides a mechanism for landlords to end a tenancy for cause by serving the tenant with a 1 Month Notice. Subsections (4) and (5) provides for the tenant’s right to dispute the 1 Month Notice and what happens if a tenant does not dispute the 1 Month Notice, as follows:

(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.

(5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant

(a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and

(b) must vacate the rental unit by that date.

The tenant’s son, HF, indicated one of the reasons the subject 1 Month Notice was not disputed is because they had already had a hearing to deal with these matters. The tenant and her son are laypersons and although they did not make express statements or arguments that the landlord is estopped from issuing another 1 Month Notice for the same cause under the doctrine of res judicata, I have considered it.

In reviewing the file for the previous proceeding, it is clear the tenant had filed to dispute the 1 Month Notice issued on June 29, 2021 and the tenant did not file an Amendment or submit a copy of the 1 Month Notice dated February 28, 2022 to amend that previous application to include the 1 Month Notice dated February 28, 2022. In reading the previous decision issued for the previous proceeding, the Arbitrator did not make any record of the tenant seeking to amend the application orally at the hearing to include the February 28, 2022 1 Month Notice and the Arbitrator only made a decision concerning the 1 Month Notice issued on June 29, 2021. Accordingly, it is clear that the 1 Month Notice before me has not been heard and decided already. That leads me to consider whether the same cause has already been heard and decided before and I find the cause put forth on both of the 1 Month Notices is somewhat different in that the subject 1 Month Notice also referred to the tenant’s failure to re-direct the downspouts and re-level the manufactured home. Also, the subject 1 Month Notice was issued subsequent to further reports being issued by two engineers, testing by a hydrologist, and additional

warning letters issued to the tenant. For these reasons, I am satisfied the landlord was not estopped from issuing the 1 Month Notice on February 28, 2022.

The next issue I have considered is whether the parties withdrew the subject 1 Month Notice by express or implied agreement. I consider this because of the landlord issued subsequent notices to end tenancy to the tenant and there was a delay in making this Application for Dispute Resolution by the landlord. There is no evidence to suggest the landlord expressly agreed to withdraw the 1 Month Notice. The landlord's lawyer gave me reasons for the delay in filing this Application for Dispute Resolution and I have confirmed the dates she put forward with the Residential Tenancy Branch records. I find the timeline the landlord's legal counsel put forward to be accurate and I accept her explanation for the delay in filing is logical. Finally, given the fate of the tenancy is not determined until the 1 Month Notice dated February 28, 2022 is decided, I find it reasonable that the landlord may continue to issue subsequent notices to end tenancy where different causes arise. Therefore, I find I am satisfied the landlord did not withdraw the subject 1 Month Notice or waive entitlement to enforce it.

In light of the above, I find the landlord was within its right to issue the subject 1 Month Notice on February 28, 2022, the tenant did not file to dispute the 1 Month Notice, and the landlord did not withdraw the notice or waive entitlement to enforce it. Therefore, I find the tenant to be "conclusively presumed" to have accepted that the tenancy would end based on the subject 1 Month Notice and the landlord is entitled to regain possession of the rental site.

I have considered the parties' respective submissions to me for the effective date of the Order of Possession and I provide the landlord with an Order of Possession effective on May 31, 2023. I have provided more time than requested by the landlord given the length of this tenancy and the tenant is elderly.

The tenant remains obligated to pay rent and comply with the Act, regulations and tenancy agreement until May 31, 2023. The tenant also remains obligated to ensure any persons she permits on the property, such as her son and grandson, do not unreasonably disturb or significantly interfere with other occupants of the park or the landlord's agents.

Having found the tenancy at an end based on the subject 1 Month Notice, I find it unnecessary to hear and make findings with respect to the 1 Month Notices issued to the tenant in August 2022 and October 2022.

Since the landlord was successful in this Application for Dispute Resolution, I award the landlord recovery of the \$100.00 filing fee.

Conclusion

The tenancy is ended based on the 1 Month Notice dated February 28, 2022. The landlord is provided an Order of Possession effective May 31, 2023.

The landlord is provided a Monetary Order in the amount of \$100.00 to recover the filing fee paid for this application.

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: March 29, 2023

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Residential Tenancy Branch