



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, O, FF

### Introduction

This hearing dealt with the tenants' Application for Dispute Resolution seeking to cancel a notice to end tenancy.

The hearing was conducted via teleconference and was attended by the male tenant and the landlord.

I note here, the landlord did not verbally request an order of possession during these proceedings.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 40, 46, 48, 60, 61, and 65 of the *Manufactured Home Park Tenancy Act (Act)*.

### Background and Evidence

The tenancy began on July 6, 2006 as a month to month tenancy with a current pad rent of \$150.00 per month. The parties disagree with the due date for rent – the tenant asserts rent is due on the 10<sup>th</sup> of each month and the landlord asserts it is due on the 1<sup>st</sup> of each month.

The tenants submitted a copy of a 1 Month Notice to End Tenancy for Cause dated July 1, 2011 with an effective vacancy date of August 1, 2011 citing the tenants are repeatedly late paying rent; the tenants or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord; and the tenant has not done require repairs of damage to the unit/site.

The tenant testified that he acknowledges that he has been late with rent on a very regular basis but that at times he also pays rent in advance. He confirms that the landlord has indicated that she wanted rent paid on the 1<sup>st</sup> of each month for some time now but that he didn't take her seriously but that he would now do so.

Both parties provided copies of rent receipts showing rent paid late on several occasions throughout the course of the tenancy and that several times the tenant would pay the current month rent late but also pay the next month rent with that late payment.

The landlord testified the towards the end of June 2011 the tenant had a party at their fire pit that she received complaints about and that she ended up calling police to close the party down. The landlord stated she did not speak to the tenants about the impacts on the tenancy should they continue this behaviour.

The landlord suspects, but has not confirmed, that the tenants have a marijuana grow operation on their site. The landlord states that she has received complaints about the smell of marijuana from other tenants and she gave the tenant several 5 gallon pails recently.

The landlord testified that she had been after the tenants to clean up the site for about a year now including the removal of a trailer from an adjoining site and two from the tenants' site. The landlord has confirmed the tenants have cleaned up the site within the last couple of weeks.

### Analysis

Section 40 the *Act* states a landlord may end a tenancy because a tenant is repeatedly late paying the rent; the tenant or a person permitted in the park by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; the tenant or a person permitted in the park by the tenant has engaged in illegal activity that has or is likely to jeopardize a lawful right or interest of another occupant or the landlord; or the tenant does not repair damage to the site within a reasonable time.

In relation to the landlord's cause that the tenants or a person permitted in the park by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, I find the landlord has failed to discuss with the tenants the incident the landlord is relying on to end this tenancy. As such, the landlord has denied the tenant an appropriate warning and time to correct the behaviour and find this incident cannot be relied upon to end the tenancy.

In regard to the landlord's allegation that the tenants are engaged in any illegal activity, I find the landlord has failed to establish anything beyond an allegation that the tenant is involved in a marijuana grow operation and therefore I find the landlord has failed to establish this as a cause to end the tenancy.

I accept the landlord has been trying to have the tenant clean up the site and that the tenant, in his own words, "didn't take the landlord seriously" and failed to clean the site within a reasonable time despite the site being cleaner at this time. However, as neither party provided any documentary evidence to establish the impact of the condition of the site, I cannot determine if the condition of the site warrants ending the tenancy.

Finally, in the matter of repeated late payment of rent Residential Tenancy Policy Guideline #38 states that three late payments are the minimum number sufficient to justify a notice under Section 40 of the *Act*. While I understand the tenant's position that the previous management did not enforce the payment of rent on the due date, I find the landlord has, for at least the last year, tried to impress upon the tenant the importance of paying rent on time.

In addition, despite the dispute over the date that rent is due, I accept the tenant's testimony when he states that he has even been late beyond the 10<sup>th</sup> of the month and therefore find the landlord has established sufficient cause to end the tenancy for the late payment of rent.

I note however the landlord has entered an incorrect effective date on the 1 Month Notice to End Tenancy. Section 46 of the *Act* deems the notice to be changed to be effective on a date that is at least 1 month in advance and is the day before in the month the day that rent is due.

Based on the landlord's testimony that all other tenants in the park pay their rent on or before the 1<sup>st</sup> of each month and in the absence, I find it more likely that the 1<sup>st</sup> of the month is the due date for rent in this tenancy.

### Conclusion

For the reasons noted above I find the landlord has sufficient cause to end the tenancy and the effective date of the 1 Month Notice to End Tenancy for Cause issued by the landlord on July 1, 2011 is August 31, 2011.

I dismiss the tenant's Application in its entirety, 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: August 03, 2011.

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Residential Tenancy Branch