



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **INTERIM DECISION**

Dispute Codes      CNC, MNDC, OLC, RP, RPP, RR

### Introduction

This hearing dealt with the tenant's application to cancel a 1 Month Notice to End Tenancy for Cause, for a Monetary Order for damage or loss under the *Residential Tenancy Act (the "Act")*, regulations or tenancy agreement; and for Orders for compliance, repairs, and authorization to reduce rent. The tenant also applied for an order for the landlord to return his personal possessions.

The parties and their witnesses appeared. The parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

The parties were informed that I would affirm their witnesses into the hearing, and explained that the witnesses, who were all present with the respective parties, would be excluded from the conference call hearing until it was their time to testify.

After affirmation I further instructed the parties to have their witnesses leave the room, do not come back in until called and that they must be out of audible range of the hearing.

I note that it appeared that the parties complied with my directions, as I heard the witnesses walk away and doors closed.

### **Preliminary Issue**

The tenant was informed that the issues in his application other than the primary issue of seeking cancellation of the Notice to End Tenancy were not sufficiently related to the main issue. Thus there was a possibility that those remaining issues and requests would not be heard on the day of the hearing, but would be considered in an adjourned hearing.

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

1. Is there a basis to cancel the Notice to End Tenancy for Cause?
2. Is it necessary to issue Orders to the landlord for compliance, to make repairs, to return the tenant's personal possessions and to reduce rent payable?

### Background and Evidence

This tenancy began officially on November 1, 2006, monthly pad rental began at \$295.00 and is currently \$334.90. The tenant stated that he had actually begun occupying the site in September 2006.

The manufactured home park site in question is adjacent to a motel, both of which are owned by the landlord. The owner/landlord stated that he resides in a suite in the motel and that his office is in the motel.

The landlord issued to the tenant a One Month Notice to End Tenancy for Cause (the "Notice") dated June 30, 2011, via mail on July 5, 2011. A copy of the Notice was provided in evidence. The landlord alleges the following reasons for ending the tenancy:

- the Tenant or a person permitted on the property by the Tenant has:
  - (i) significantly interfered with or unreasonably disturbed another occupant or the Landlord,

Pursuant to the Residential Tenancy Branch Rules of Procedure, the landlord proceeded first in the hearing to explain or support the Notice.

The landlord's relevant evidence included various letters and email communications between the parties, dating back to 2008, a letter from the landlord's witness, diagrams of the manufactured home park, including the location of the tenant's site, the tenancy agreement, and a letter from a neighbouring site.

The landlord testified that the tenant, since the tenancy began, has been verbally abusive to the landlord and his staff. Due to this, repeatedly since 2008, according to the landlord, the tenant has been instructed to stay off the premises of the motel and to use the manufactured home park's entrance to the main road for entry to the park. Despite the landlord's instructions, the tenant still encroaches on the motel's premises and remains verbally abusive to the landlord.

Despite the landlord's instructions, the ongoing issues remained, which the landlord asserts is the tenant's hostile, abusive treatment of himself and his employees.

The landlord submitted that in May 2011, an irrigation pipe, which ran across the tenant's property, burst, which necessitated the landlord's maintenance worker accessing the tenant's property to repair the pipe. According to the landlord, the tenant shouted at the worker, called him a profane name, told the worker to get off his property and do not come back.

The landlord submitted that the tenant has now blocked access to the pipe and, as a result, the irrigation system to other areas of the park has not been turned on since May.

The culminating event leading to the issuance of the Notice occurred on June 30, 2011, according to the landlord. The tenant, who was outside of the landlord's office on the motel grounds, became offended at the landlord asking his wife to leave, and screamed out, calling the landlord a profane name, which will not be repeated in this Decision.

The landlord's witness, the maintenance worker, confirmed that the tenant called him, the witness, a profane name on the day of the attempted repair, and confirmed that the tenant ordered him off the tenant's rental site.

The witness testified that he was above the motel office cleaning a room on June 30, 2011, and confirmed that tenant screaming out the profane name to the landlord.

In response the tenant denied calling the landlord that profane name and denied calling the witness a profane name.

The tenant stated that he is a small man with a disability and that the landlord and his witness are at least 6' tall. Therefore it would be impossible for him to intimidate the landlord and witness. The tenant contended that the landlord initiated the name calling at the start of the tenancy and has not yet apologised.

The tenant submitted that he has acquiesced to the landlord's request to not enter the motel's premises from 2008 until recently, although he contends that this restriction is a tyrannical and unconscionable term of the tenancy.

The tenant denied being abusive and threatening to the landlord throughout the tenancy, as contended by the landlord.

At the conclusion of the tenant's testimony, I asked the tenant if he wanted his wife to testify and the tenant responded in the affirmative as she could testify as to what happened on June 30.

I then asked the tenant to go call his wife, at which point the wife **immediately** responded, saying "hello." I then asked the wife to put the tenant back on the phone, and asked him where his wife had been during the conference, as I heard no walking to get his wife, no door opening or closing and his wife responded with a greeting immediately after asking the landlord to go ask his wife to testify.

The tenant supplied several responses, initially saying that his wife was out of the room, then saying she was with the other two witnesses outside, but was in and out checking on her time to testify, and then saying she had just come back in to see if it was her time to testify.

As I found this testimony lacking in credibility, I concluded the tenant's wife had been listening to the conference the entire time and I therefore excluded the tenant's wife from testifying.

After the tenant's wife was excluded from testifying, the time left for the hearing was nearing expiration and the remaining portion of the tenant's application could not be considered.

### Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

Only the evidence and testimony relevant to the issues and findings in this matter are described in this Decision.

Once the tenant made an Application to dispute the Notice, the burden of proof is on the landlord to prove the cause listed on the Notice, in this case that the tenant significantly interfered with or unreasonably disturbed another occupant of the residential property or the landlord.

After considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant significantly interfered with and unreasonably disturbed the landlord.

In reaching this conclusion I was influenced by the tenant's testimony and statements to me concerning where his wife had remained during the hearing. I find the tenant giving one version, changing to another version and then yet again changing to another version reflected on the tenant's credibility. Due to this, I find, on a balance of probabilities, that the tenant lacked credibility, which brings all evidence and testimony of the tenant into question.

As I have found that the tenant's testimony and evidence lack credibility or reliability, the testimony and evidence of the landlord will be preferred.

I accept the landlord's testimony that the tenant's pattern of behaviour has been abusive and threatening over the course of the tenancy and that the landlord has tried to avoid the situation by asking the tenant not to come on the motel's premises, which the tenant failed to abide by.

I accept the landlord's testimony that the tenant, as recently as May 2011, interfered with the landlord's obligation to make repairs and called the landlord's employee an offensive name.

I was particularly influenced by the testimony of the landlord and the confirmation by the landlord's witness, that the tenant appeared at the office of the landlord's motel on June 30, 2011, and shouted out a particularly profane name. I accept this testimony and find the tenant's pattern of behaviour and this name to be extremely offensive, such that it significantly interfered with and unreasonably disturbed the landlord and the landlord's right to carry on his business of running the hotel.

Considering the totality of the evidence, I find that the tenant has significantly interfered with and unreasonably disturbed the landlord and I therefore **dismiss** the tenant's application requesting cancellation of the Notice, **without leave to reapply**.

Under Section 48 of the Act, if a tenant's application to cancel a Notice has been dismissed, I may grant the landlord an order of possession.

As the landlord has made a verbal and written request for an order of possession, I grant the landlord an Order of Possession effective on **August 31, 2011, at 1:00 p.m.** after service on the tenant.

This Order is a final, **legally binding Order**, and may be filed in the Supreme Court should the tenant fail to comply with this order.

As I have issued the landlord an Order of Possession, it is no longer necessary to deal with the tenant's request for Orders for compliance, repairs, and authorization to reduce rent. I therefore **dismiss** the tenant's application requesting Orders for compliance, repairs, and authorization to reduce rent, **without leave to reapply**.

Due to the length of the hearing, I have severed the tenant's application in order to deal with the main issue, the tenant's request to cancel the Notice.

I have adjourned the hearing to deal with the remaining portion of the tenant's application, which is the tenant's request for a monetary order and for an order requiring the landlord to return the tenant's personal property.

The adjourned hearing is scheduled to reconvene in accordance with section 64 of the *Residential Tenancy Act*, for the purpose of hearing from the parties on those matters.

Additional documentary evidence will not be accepted from the parties. Consideration will be given to the documentary evidence timely received prior to the original hearing.

### Conclusion

The tenant's application to cancel the Notice to End Tenancy dated June 30, 2011, is dismissed, without leave to reapply.

The tenant's application dealing with his request for Orders for compliance, repairs, and authorization to reduce rent is dismissed, without leave to reapply.

The landlord is granted an Order of Possession, effective August 31, 2011, at 1:00 p.m.

The hearing to deal only with the tenant's request for a monetary order and for an order requiring the landlord to return the tenant's personal possession is adjourned to the date specified in the enclosed Notice of Adjourned Hearing, after which a final Decision will be rendered as to those remaining causes.

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: August 10, 2011.

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Residential Tenancy Branch