



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MT CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Manufactured Home Park Tenancy Act* (the *Act*) for:

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 59;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 40;

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As both parties were present service of documents was confirmed. Each party confirmed they were in receipt of the other's materials. Based on the testimonies I find that each party was served with the respective materials in accordance with sections 81 and 82 of the *Act*.

At the outset of the hearing, the tenant testified that they had erroneously indicated this application is being made under the Residential Tenancy Act on the initial application for dispute resolution. Pursuant to my power to amend an application under section 57(3) of the *Act*, I amend the landlord's application for dispute resolution to make this application under the appropriate *Act*.

Issue(s) to be Decided

Should the tenant be granted more time to file their application?

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

This tenancy began in November, 1989. The tenant GP is the sole tenant on the written tenancy agreement. The tenant DP is GP's daughter and moved into the manufactured home park in 2016. The park contains 25 pads.

The tenant DP submits that while they were not added to the tenancy agreement they have been a resident of the park with the knowledge and consent of the landlord. DP testified that they have no other residence and have resided with the tenant GP for the past 3 years.

The landlord issued a 1 Month Notice dated May 9, 2019 on that date naming the tenant GP. The reason provided on the 1 Month Notice for the tenancy to end is that the tenant or a person permitted on the property by the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord testified that the daughter DP has caused considerable conflict in the park with other residents. The landlord submitted into evidence copies of complaint letters from park occupants and numerous warning letters issued to the tenant GP.

The tenant disputes that the complaints received by the landlord are valid and submits that they are exaggerated or fabricated.

Analysis

Residential Tenancy Policy Guideline 13 states:

Where a tenant allows a person who is not a tenant to move into the premises and share the rent, the new occupant has no rights or obligations under the tenancy agreement, unless all parties agree to enter into a tenancy agreement to include the new occupant as a tenant.

I accept the evidence of the parties that the named tenant DP is not a tenant listed on the tenancy agreement. While the parties gave evidence that DP's residence in the

park is known I do not find that gives rise to the rights and obligations of a tenant under the Act. I find that there is insufficient evidence that the landlord agreed to add DP to the tenancy agreement to consider them a tenant for the purposes of the Act. Therefore, I find that the applicant DP is an occupant rather than a tenant.

In accordance with section 40(4) of the Act, a tenant may dispute a 1 Month Notice within 10 days of receipt by filing an application for dispute resolution. In the present case the parties confirmed that the 1 Month Notice was received on May 9, 2019 and the tenant filed their application on May 22, 2019, outside of the 10 days provided under the Act.

Section 59 of the *Act* allows a time limit established in the Act to be extended in *exceptional circumstances*. Policy Guideline 36 goes on to say that “exceptional implies that the reason for failing to do something at the time required is very strong and compelling.” Furthermore, the party making the application for additional time bears the onus of putting forward persuasive evidence to support the truthfulness of the reason cited.

I find that the tenant has not provided a cogent, reasonable or convincing reason as to why the tenant was unable file their application within the timeline provided under the Act. I am unable to find that there is sufficient evidence to conclude that there were exceptional circumstances to allow an extension of a time limit established by the *Act*. I find that the tenant has failed to file an application for dispute resolution within the 10 days of service granted under section 40(4) of the *Act*. Accordingly, I find that the tenant is conclusively presumed under section 40(5) of the *Act* to have accepted that the tenancy ended on the corrected effective date of the 1 Month Notice, June 30, 2019.

Section 48(1) of the *Act* reads as follows:

**48** (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the manufactured home site if*

- (a) the landlord's notice to end tenancy complies with section 45[form and content of notice to end tenancy], and*
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

I find that the landlord's 1 Month Notice meets the form and content requirements of section 45 of the *Act* as it is in the approved form and clearly identifies the parties, the address of the manufactured home site, the effective date of the notice and the reason for ending the tenancy.

I find the landlord's documentary evidence in the form of complaint letters by other occupants of the park and warning letters issued to the tenant to be sufficient to show on a balance of probabilities that the tenant or their family member permitted onto the property by the tenant has unreasonably disturbed and significantly interfered with the other occupants and landlord. I do not find the tenant's submission that the complaints are unwarranted to be at all convincing or supported in the evidence.

Therefore, I find that the landlord is entitled to an Order of Possession pursuant to section 48 of the *Act*. As the effective date of the 1 Month Notice has passed, I issue a 2 day Order of Possession.

### Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I grant an Order of Possession to the landlord effective **2 days after service on the tenant**. Should the tenant or anyone on the premises fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

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: July 4, 2019

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Residential Tenancy Branch