



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SPARDELL MOBILE HOME PARK  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      OPC OPM FFL CNC FFT MNDCT RP RR

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Manufactured Home Park Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- for an Order of Possession for cause pursuant to section 48;
- for an Order of Possession because a mutual agreement to end the tenancy was signed, pursuant to section 48; and
- authorization to recover the filing fee for this application, pursuant to section 65.

The tenants requested:

- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (1 Month Notice) pursuant to section 40;
- a monetary order for money owed or monetary loss under the *Act*, regulation or tenancy agreement pursuant to section 60;
- an order to allow the tenants to reduce rent for repairs, services or facilities agreed upon but not provided, pursuant to section 58,
- an order to the landlord to make repairs to the rental unit pursuant to section 27; and
- authorization to recover the filing fee for this application, pursuant to section 65.

RP and CP appeared for the landlord in this hearing. 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.

Both parties confirmed receipt of each other's applications for dispute resolution hearing package ("Applications") and evidence. In accordance with sections 81 and 82 of the *Act*, I find that both the landlords and tenant were duly served with the Applications and evidence.

The tenants confirmed receipt of that the 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) dated July 4, 2019, with an effective date of August 31, 2019. Accordingly, I find that the 1 Month Notice was served to the tenants in accordance with section 81 of the *Act*.

At the beginning of the hearing, the tenants indicated that they were withdrawing their application for a monetary order, as well as their application for a rent reduction. Accordingly, these portions of the tenants' application are cancelled.

### **Issues**

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the landlord entitled to an Order of Possession because a mutual agreement to end tenancy was signed?

Are the tenants entitled to an order requiring the landlord to make repairs to the rental unit?

Are both parties entitled to recover the filing fees for their applications?

### **Background and Evidence**

This month-to-month tenancy began in July of 2011. Monthly pad rental is currently set at \$315.00, payable on the first of the month.

The landlord served the tenants with a one month notice to end tenancy on July 4, 2019 for the following reason:

1. The tenant is repeatedly late paying rent

The landlord's agents testified that the tenants have an extensive history of paying their rent late. The landlord provided detailed documentation of the history of late rent payments during this entire tenancy, which included late rent payments during the months of April, May, June, and September of 2018. The tenants testified that they are now currently up to date with their rent.

The landlord's agents testified that after attempting to work things out with the tenants, both parties had agreed to mutually resolve this matter. On January 10, 2019, both parties signed an agreement that the tenants would remove their manufactured home, and either sell it to the landlord for \$25,000.00, or sell it to a new tenant acceptable to the landlord. The tenants admit that they had not completed this agreement as they feel that \$25,000.00 is below the market value for their home, and the tenants testified that due to various issues such as issues with the septic tank, that was not fixed until September 16, 2019. The tenants feel that this agreement was signed under duress, and not valid.

The landlord is also seeking an Order of Possession. The tenants requested more time to sell their home, and find a new place to move to, but both parties could not come to a mutual resolution after some discussion during the hearing.

The tenants also filed an application requesting repairs as they feel the landlord has failed to maintain the water and waste systems up to an acceptable standard.

### **Analysis**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

Section 40 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenants may dispute the 1 Month Notice by filing an application for dispute resolution within ten days after the date the tenants receives the notice. The tenants were mailed the 1 Month Notice on July 4, 2019, which is deemed served under sections 88 and 90 of the *Act* 5 days later, on July 9, 2019. As the tenants filed their application on July 18, 2019, which is within 10 days of being deemed served the 1 Month Notice, the onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notice.

I note the wording of RTB Policy Guideline #38, which provides the following guidance regarding the circumstances whereby a landlord may end a tenancy where the tenant is repeatedly late paying rent.

*Three late payments are the minimum number sufficient to justify a notice under these provisions...*

*However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be “repeatedly” late...*

I am satisfied that the tenants have been repeatedly late in paying their rent during this tenancy, which is supported by the landlord's evidence. I find that the repeated late rent payments by the tenants meet the criteria for sufficient cause to end this tenancy under section 40(1)(a) of the *Act*. Therefore, I am dismissing the tenants' application to cancel the 1 Month Notice dated July 4, 2019, without leave to reapply.

**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 rental unit 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.

Based on my decision to dismiss the tenants' application for dispute resolution and pursuant to section 48(1) of the *Act*, I find that this tenancy ended on the effective date of the 1 Month Notice. I find that the 1 Month Notice complies with section 48(1) of the *Act*. Accordingly, I find that the landlord is entitled to a 2 day Order of Possession. The landlord will be given a formal Order of Possession which must be served on the tenants. If the tenants do not vacate the rental unit within the 2 days required, the landlord may enforce this Order in the Supreme Court of British Columbia.

As the tenants were unsuccessful in this application, the tenants' application to recover the filing fee is dismissed without leave to reapply.

As this tenancy has come to an end, I also dismiss the tenants' application for repairs without leave to reapply.

As the landlord was successful in their application, I allow the landlord to recover the filing fee for this application.

**Conclusion**

The tenants withdrew their application for a monetary order and rent reduction.

I dismiss the remainder of the tenants' application without leave to reapply. I find that the landlord's 1 Month Notice dated July 4, 2019 be valid, and complies with section 45 of the *Act*.

I grant an Order of Possession to the landlord effective two days after service of this Order on the tenant(s). Should the tenant(s) fail to comply with this Order, this Order may be filed and enforced as an Order of the Supreme Court of British Columbia.

I allow the landlord's application to recover the filing fee for this application. I issue a Monetary Order in the amount of \$100.00 in the landlord's favour.

The landlord is provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order as soon as possible. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: September 24, 2019

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Residential Tenancy Branch