



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding K.L. CHONG & ASSOCIATES  
LTD. and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC, OLC, FFT

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 40;
- An order that the landlord comply with the *Act* pursuant to section 55;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 65.

The tenant attended with the lawyer VS (“the tenant”). The agent attended on behalf of the landlord (“the landlord”).

The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions.

No issues of service were raised. I find each party served the other in compliance with the *Act*.

The parties confirmed they were not recording the hearing.

The parties confirmed their email addresses to which the Decision shall be sent.

### *Settlement Discussions*

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. I informed both parties that I could not provide legal advice to them. I informed them I make my Decision after the hearing and not during the hearing.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

The Arbitrator assisted the parties in efforts to settle the matter. Settlement discussions were unsuccessful, and the hearing continued.

### *Landlord Application for Order of Possession*

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice issued in compliance with the *Act*, I was required under section 45 of the *Act* to grant an Order of Possession in favour of the landlord. Section 45 states as follows:

*45 (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 52 [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.*

The landlord requested an Order of Possession.

### *Unrelated Claims*

The tenant's application included unrelated claim(s) in addition to the tenant's application to dispute the landlord's One Month Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy. Therefore, I find that the additional claim(s) are not related to whether the tenancy continues.

Therefore, all the tenant's claims except for the application to dispute the landlord's Notice and reimbursement of the filing fee are dismissed with leave to reapply.

The tenant may reapply for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

### Issue(s) to be Decided

Is the tenant entitled to an Order cancelling the One Month Notice and reimbursement of the filing fee?

Is the landlord entitled to an Order of Possession?

### Background and Evidence

Considerable testimony was submitted in a lengthy hearing of an hour and 48 minutes. The landlord submitted documentary evidence including written submissions of 71-pages. The tenant also submitted considerable documentary evidence.

I have reviewed all evidence before me that met the requirements of the *Act* and the Rules of Procedure. Not all this evidence is referenced in my Decision. I refer to only the relevant and key evidence regarding the facts, the issues and my findings.

The tenant's adult son E.D. has the same first and last name as the tenant; the son is sometimes called "E.D. Junior" and the father, "E.D. Senior". In the evidence, the son is occasionally referred to as "T. Jr" and the father as "T. Sr". In this Decision I refer to the tenant's son E.D. Junior as "the tenant's son".

This application concerns the father, the tenant applicant. However, most of the evidence related to the tenant's son.

### *Background*

The landlord testified as follows. The landlord operates a manufactured home park ("the park"). There is one road leading into the park. The landlord submitted a copy of an aerial photo of the park showing the location of the sites which face each other on either side of the road.

The landlord submitted a copy of the standard tenancy agreement titled "Manufactured Home Site Tenancy Agreement". A copy of a signed tenancy agreement was not submitted.

The Agreement includes a provision that the tenant must not disturb, harass, or annoy other residents or the landlord, such as creating noise or illegal activity. The Agreement also prohibits the "growing, production, processing, or manufacture of cannabis or any other drugs anywhere on the Site or in the Park". The tenant submitted a copy of the park Rules which state the speed limit in the park is 10 kph.

The subject of this application is Site 25. The tenant has rented the site from the landlord and lived there for 23 years.

The parties agreed on the following description of the tenancy:

INFORMATION	DETAILS
Type of Tenancy	Monthly
Beginning Date	Over 23 years ago
Rent payable on first of month	\$610.00

*Sites 10 and 24*

As stated, the tenant rents Site 25 from the landlord. He occupies a manufactured home on that site. The tenant has lived there for 23 years and continues to do so.

Site 25 is the subject of this application. At times important to this application, the tenant also rented Sites 10 and 24. Events relating to these two other sites are relevant to this application.

Beginning in April 2018, the tenant's son rented the manufactured home on Site 10 from the tenant.

The landlord applied for an Order of Possession with respect to Site 10 because of the tenant's son's alleged criminal behaviour and addiction.

In the RTB Decision of August 8, 2022, Decision, the file number for which is referenced on the first page, the Arbitrator wrote:

On balance I accept the Landlord's allegation that [the tenant's son] has drug dealers attend the manufactured home [Site 10] and that these constitute an ongoing disturbance at the park.

The Arbitrator reviewed the landlord's evidence and found:

... the collective impact of the various incidence make it clear that the [tenant's son's] conduct constitutes an unreasonable disturbance to the other occupants of the manufactured home park.

I find that the frequent daily visits from vehicles, the police attendance, and two attendances by paramedics due to probably overdoses constitute a frequent and ongoing conduct by the [tenant's son's] that unreasonably disturbs the other occupants of the manufactured home park.

I further find that the nature of the disturbances seriously jeopardize the health, safety and lawful right of the other occupants at the manufactured home park. I make this finding relying upon the incident described in August 2021 in which the other park tenants describe hiding in the back of the trailer.

As stated, on August 8, 2022 the tenant was ordered to provide vacant possession of the manufactured home site within two (2) days of receiving the order.

On August 25, 2022, two bailiffs executed the writ of possession along with the RCMP and movers.

The tenant's son then moved out of Site 10 into moved immediately into Site 24 rented by his father. The tenant's son took up occupancy on the tenant's manufactured home on Site 24 and has lived there ever since. The tenant's son never moved out of the park.

The landlord has brought an application for an Order of Possession with respect to Site 24 which was heard January 26, 2022. The file number for this application appears on the first page.

This is an application by the landlord for an Order of Possession with respect to the site occupied by the tenant which is across the street from Site 24.

### *Warning*

The parties submitted a copy of a warning notice to the tenant dated May 25, 2022 relating only to cleaning of the site and repairs. The landlord stated these issues had been addressed.

No written warning was submitted regarding the allegations contained in the One Month Notice.

A description of the One Month Notice follows.

### *One Month Notice*

The parties agreed the landlord issued a One Month Notice as follows:

INFORMATION	DETAILS
Type of Notice	One Month Notice
Date of Notice	August 31, 2022
Effective Date of Notice	September 30, 2022
Date and Method of Service	Acknowledged by tenant
Application for Dispute Resolution filed	September 2, 2022 (within time)

A copy of the One Month Notice was submitted in the RTB form. The Notice states:

after many years and many incidents with this individual including police file numbers and charges laid because of behavior, what he allows as acceptable. Other residents have had to tolerate this far to long.

[The tenant's son] was recently evicted from a unit (unit 10) that he [the tenant] owned until August 25, 2022, when the bailiffs removed his son from that unit, and this resident [the tenant] subsequently is allowing his son to stay in another unit he [the tenant] also owns (unit 24). It is time that he, and his son, be removed from the park so that our park can finally start healing.

The landlord alleged several grounds in the One Month Notice and primarily provided evidence with respect to the first ground:

1. Tenant or a person permitted on the property by the tenant has (check all boxes that apply):
  - a. significantly interfered with or unreasonably disturbed another occupant or the landlord.
  - b. seriously jeopardized the health or safety or lawful right of another occupant or the landlord. put the landlord's property at significant risk.
  - c. put the landlord's property at significant risk
2. 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 or the landlord.

3. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.
4. Tenant has not done required repairs of damage to the unit/site.
5. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.
6. Tenant has assigned or sublet the rental unit/site without landlord's written consent.

The landlord relied mainly on the first ground, that is, the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The parties' evidence and my findings are with respect to this aspect of the Notice.

#### *Landlord's Evidence*

The agent who testified for the landlord at the hearing, said she has lived in the park for 18 years and has been the manager for 8 years and has first hand experience and knowledge of what takes place in the park.

The agent's spouse is the park's caretaker. The landlord watches over the park, walks around regularly, and observes daily happenings.

The landlord testified as follows with respect to key events relevant to the One Month Notice:

1. The tenant is an illegal drug user who purchases the illegal drugs from his son who lives in Site 24, across the street from the tenant's home.
2. As stated, the landlord obtained an Order of Possession against the tenant regarding Site 10, where the tenant's son previously lived. The Order of Possession regarding Site 10 was granted because of the tenant's son's alleged behaviour



including illegal drug use and dealing. The findings of the Arbitrator are referenced above. The number of the previous Decision appears on the first page.

3. The tenant permitted and helped his son, a known addict and criminal dealer of illegal drugs, to move from Site 10 to Site 24 where the tenant's son has lived ever since. The tenant's son's disruptive behaviour and alleged criminal conduct has continued unabated.
4. The tenant and the tenant's son now live across the street from each other.
5. The tenant has defied and thwarted the landlord's efforts to "clean up the park" and get rid of the tenant's son after years of problems. By renting the manufactured home on Site 24 to his son, the landlord permitted a drug dealer, his son, to continue to live in the park, thereby continuing to significantly disturb the landlord and other park residents. The tenant's actions are a significant disturbance under the Act and warrant the tenant's eviction.
6. The tenant pays the expenses for Site 24 and provides financial means to his son by purchasing illegal drugs.
7. For clarity, the landlord stated the evidence with respect to alleged drug purchase and sale concerns illegal transactions. This includes unprescribed OxyContin and other such drugs that are illegal to buy and sell. The landlord does not refer to transactions involving marijuana.
8. Vehicles come and go to the tenant's son's residence, travelling at unsafe high speeds, often several times a day delivering illegal drugs to the tenant's son who uses and sells them. The landlord concludes the vehicles are driven by drug dealers who are delivering illegal substances to the tenant's son. The frequent deliveries endanger residents, pedestrians and playing children.. None of these vehicles travel to and from the tenant's home.
9. The landlord has reported the persistent traffic of the vehicles to the police and were informed by them, and believe, the vehicles belong to a well known criminal drug dealing group.
10. The landlord has watched transactions in which the drivers of the vehicles exchange objects with the tenant's son, believed to be drugs in exchange for cash.

11. The landlord has observed the tenant watching this exchange from his home across the street and then going to his son's where another exchange takes place.

12. The tenant went to the landlord's home on March 28, 2021, said his son had been beaten with a baseball bat by unknown assailants, which the landlord understood was from disagreements around drug dealing. The tenant told the landlord and her spouse that "if anyone fucks with my kid, I will fucking kill them". The tenant then left and smashed another resident's planters with a baseball bat.

13. As a result of this statement and other actions of the tenant, the landlord and her spouse believed they were being personally threatened to leave the tenant's son alone and let him continue living in the park. The landlord has been afraid to bring proceedings to evict the tenant's son.

14. On April 13, 2021, the landlord stopped one of the vehicles travelling to and from the tenant's son's home. They told the driver to slow down. The driver asked the landlord, "do you know who the fuck you are dealing with". The landlord started receiving threatening texts on her phone which were reported to the police. This included threats to blow her house up and kill her children. While the tenant and the tenant's son denied any knowledge of the origin of the texts, the landlord believed their drug involvement was the primary reason.

15. Throughout the tenant's son's occupancy of one of the tenant's manufactured homes (that is, Sites 10 and 24), many residents have complained about the tenant's son. The landlord submitted copies of many written complaints.

16. In a written complaint, two park occupants alleged that the tenant's son came to their property in August 2021 warning them that he had upset a drug dealer and he feared retaliation. The occupants told the landlord they were afraid for their families.

17. The landlord claimed a fire in the park was an act of vandalism directed at the tenant's son for a drug debt.

18. The landlord submitted letters alleging the tenant was dishonest and unreliable. Most allegations in the witness letters related to the tenant's son.

19. One submitted letter signed by JB referred to the tenant as, "a liar, thief, and also a very unstable person, whom has allowed most everything to happen, then asks what his son has done wrong...??"

20. A resident of the park said that on April 15, 2022, they witnessed the tenant's son smashing his head on the pavement repeatedly. They ran to the tenant's home who grabbed his son off the ground and cared for him.

21. A submitted police report dated April 29, 2022 stated:

We have yet to have charges approved in court but here is a brief summary.

We were investigation sophisticated drug trafficking organization I (sic) the city of Surrey. Surveillance determined that there were individuals attending Units 10 & 12 who were higher ranking members of the group. We were uncertain the roll that the units played in our investigation and drafted warrants to search them.

Upon execution of the warrants there was no evidence gained within that furthered the investigation. Again, we are awaiting charge approval so the information that I can release is limited.

That being said, I entered both units and both should be condemned. The amount of items that were located inside [the tenant's son's] unit would constitute a hoarding issue and the amount of filth and black mold makes it uninhabitable.

22. The landlord verbally warned the tenant many times not to rent to his son. All warnings were ignored.

23. The landlord did not submit copies of any written warnings to the tenant.

24. The landlord claimed the tenant clearly knows what his son is up to, the tenant buys illegal drugs from his son, the tenant enables his son to continue to live in the park and disturb residents, and the tenant will never make his son move away. The landlord claimed the totality of the tenant's actions amount to significant disturbance within the meaning of the Act.

*Tenant's Evidence*

The tenant denied the landlord's alleged facts and said the conclusions were false.

The tenant stated as follows.

1. The tenant is in his 70's, has lived in the park for 23 years and does not want to move. The tenant expressed confusion and lack of comprehension about why the landlord wanted him out of the park.
2. The tenant submitted several letters attesting to his good character.
3. The tenant denied that his son buys illegal drugs or that the tenant buys such from him, saying, "I don't know what they [the landlord] have against him [his son]."
4. The tenant takes prescribed OxyContin and does not purchase any drugs from his son who also has a prescription for the OxyContin.
5. The vehicles referred to by the landlord were delivering legal cannabis and not illegal drugs.
6. The tenant acknowledged going to the landlord's home on March 28, 2021 when he was upset, but stated he did not intend to threaten the landlord personally. The tenant was expressing frustration and fear for his son. The landlord has nothing to fear from him.
7. The tenant's son is being unfairly targeted by the landlord for no good reason.
8. Other occupants of the park are dealing drugs and the landlord is unfairly demanding that his son move out of the park. The landlord is doing nothing about the real problem drug dealers.
9. When the previous Order of Possession was issued, the tenant allowed his son to move into unit 24 because he had nowhere to go and would be homeless if he did not do so. His son would have to live in a tent if the tenant did not provide him with a place to live.

10. The tenant is willing to agree that his son cannot live in the park, enter the park or visit any of the sites he rents.

11. The tenant has done nothing to restrict his son from living in the park.

In summary, the landlord requested an Order of Possession. The tenant requested the One Month Notice be dismissed.

### Analysis

As stated earlier, the parties provided considerable conflicting testimony in a lengthy hearing. Each party submitted many documents. The parties expressed fundamental disagreements about events and the motives, responsibility and accountability of the other. Only key, relevant, admissible facts and my findings are reference.

In reaching my Decision, I have considered the documentary evidence and the testimony of each of the participants.

### *Burden of Proof*

The landlord issued a One Month Notice on August 31, 2022. The tenant filed the Application for Dispute Resolution within the time allowed.

Therefore, the burden shifts to the landlord to prove the reasons on the Notice. The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the Notice.

### *Warning*

The landlord did not submit a copy of any written warning to the tenant relating to the OMN. The tenant expressed bewilderment and confusion about why the landlord wanted him out of the park.

Not every breach of a tenancy agreement or the Act will entitle the landlord to end the tenancy. Unless there is a single occurrence that is so severe that it warrants an immediate end to the tenancy, fairness requires that a landlord give a tenant notice that the conduct in question is in violation of the tenancy agreement or Act together

with a written warning that a continuation or repeat of the behaviour in question will result in the tenancy being terminated. This provides a reasonable opportunity to the tenant to adjust their conduct.

In this case, I find the incidents referred to by the landlord primarily relate to the tenant's son's behaviour as an alleged addict and dealer of illegal substances. These activities have created episodes of fear, violence and chaos.

The landlord has not alleged the tenant's son has visited the tenant or carried out illegal activities in his [the tenant's] home. There is also no single situation which the landlord relies upon. Instead, the landlord relies on a cumulative effect of the tenant's behaviour over many years in purchasing illegal substances from his son on another site and providing his son with shelter on another site.

I find the alleged threats of March 28, 2021 to be too remote in time to be relied upon by the landlord as a single serious event warranting the issuance of a One Month Notice without warning.

While the landlord claimed to have provided many verbal warnings to the tenant about his son, I find no written evidence to the tenant that his tenancy was in jeopardy if he continued to purchase illegal substances from his son or to provide shelter to him.

There is no evidence the tenant was notified in writing about the landlord's concern prior to receiving the One Month Notice. I find the tenant was not given a warning in writing that a continuation or repeat of this conduct would result in the application to end the tenancy.

While I find the breaches of the tenancy agreement or Act relied on by the landlord are not significant enough on their own to warrant eviction without warning in the circumstances as I understand them, I agree with the landlord there was a potential safety and disturbance issue concerning all park residents related to the tenant's son.

The tenant is now on notice that a repeat or continuation of the tenant's behaviour complained about by the landlord will result in issuance of another One Month Notice.

I therefore grant the tenant's application and set aside the One Month Notice.

Conclusion

I grant the tenant's application and set aside the One Month Notice.

I dismiss the tenant's claim under section 55 with 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 *Residential Tenancy Act*.

Dated: February 3, 2023

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Residential Tenancy Branch