



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, MT, FF

### Introduction

This hearing dealt with the Tenant's Application for Dispute Resolution to cancel a One Month Notice to End Tenancy for Cause, for an order allowing him more time to make an application and to recover the filing fee.

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

The Tenant served notice of this hearing on the Agent of the Landlord in person on September 13, 2010, and I find service was completed in the time and manner in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue(s) to be Decided

Is the Tenant entitled to the relief sought in his Application?

### Background and Evidence

This tenancy started on January 1, 2010, on a fixed term basis, with an expiry date of December 31, 2010. Monthly rent is \$760.00, payable on the 1<sup>st</sup> day of each month.

Pursuant to the rules of procedure for the Act, the Agent for the Landlord proceeded first in the hearing and testified as to why the Tenant had been served a One Month Notice to End Tenancy for Cause. I note that the Tenant has requested more time to file an Application, but I allowed testimony to proceed prior to considering this issue.

The Landlord issued a One Month Notice to End Tenancy for Cause to the Tenant with a stated effective move out date of September 30, 2010. I note the Notice is dated November 27, 2010, and it appears that date was hand written over and corrected as was the Method of service. I further note that when queried, the Agent for the Landlord could not provide a definite date of service.

The cause as stated by the Landlord indicated that the Tenant was repeatedly late paying in rent and significantly interfered with or unreasonably disturbed another occupant or the landlord, put the landlord's property at significant risk, and jeopardized a lawful right or interest of another occupant or the landlord.

The Agent for the Landlord supplied evidence and gave affirmed testimony that the Tenant paid rent late two times since the tenancy began and had a dog in the rental unit contrary to the tenancy agreement. The Agent for the Landlord testified that in August 2010, a policeman attended the site of the rental unit, looking for a person who was known to have a large dog. Afterwards, with the policeman, the Agent for the Landlord entered the rental unit to secure the patio door. The Agent for the Landlord testified that when he was in the rental unit, he noticed dog food and a dog bowl.

The Agent for the Landlord testified and gave evidence that another day in August 2010, an animal control officer attended the site to inquire about a dog that was tied up outside the unit.

The Agent for the Landlord acknowledged that he knew the Tenant was out of town when he entered the rental unit, but believed he was justified as he was with a police officer, which subsequently made him feel justified in looking around the rental unit.

The Tenant testified he called the Agent for the Landlord prior to his leaving for a few weeks and had a friend stay over to look after the rental unit. The Tenant further testified that he did not know the friend had the dog over with him while house sitting and further stated that the dog was not tied up on the premises with the second incident.

The Tenant testified that the Agent for the Landlord and police officer entered his suite illegally and without permission, that there was no cause to enter the unit and that the Agent knew he was out of town when he did so.

### Analysis

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

Once the Tenant made an Application to dispute the Notice, the Landlord became responsible to prove the Notice to End Tenancy is valid.

Upon review of the Notice to End Tenancy issued by the Landlord I found it to be invalid and unenforceable as the dates of service were incorrect and clearly marked over by hand. I therefore did not need to consider the Tenant's request for additional time as I am not able to determine the date he was served the Notice. As a result, the tenancy continues until such time it legally ends.

**Based on these findings, I find that the one month Notice to End Tenancy issued in this matter is not valid and I order it to be cancelled. The Notice is of no force or effect and the tenancy will continue until ended in accordance with the Act.**

Section 28 deals with the Tenant's right to quiet enjoyment, meaning reasonable privacy, freedom from unreasonable disturbance and *exclusive possession* of the rental unit. The only exception that would apply in these circumstances is an emergency which requires the Landlord to enter the unit to protect life or property, which I find did not exist. Therefore I find the Agent for the Landlord has not provided the Tenant with his right to quiet enjoyment, and has breached section 29 of the Act.

I do not make a finding of monetary compensation for devaluation of the tenancy for this loss as the Tenant has not applied for the same.

The Landlord is **ordered**, pursuant to Section 62 (3) of the Act, to comply with the terms of the Act, when seeking access to the unit and for other dealings with the tenancy, failing which, the Tenant is at liberty to file an Application seeking monetary compensation for devaluation of the tenancy.

Lastly, because the Tenant was successful in his Application, I allow the Tenant the **\$50.00** filing fee for the Application, and allow him to deduct this amount from the November, 2010, rental payment.

### Conclusion

The Landlord's One Month Notice to end Tenancy is not valid and not supported by the evidence and the Tenant is granted an order dismissing the Notice to End Tenancy.

I order the Landlord comply with the Act and direct that the Tenant be given quiet enjoyment of the rental unit and premises.

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: October 25, 2010.

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Dispute Resolution Officer