



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## **DECISION**

Dispute Codes      CNC, MNDC, OLC, OPT

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; an order to have the landlord comply with the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; an order of possession and a monetary order.

The hearing was conducted via teleconference and was attended by the tenant, his advocate and two witnesses and two agents for the landlord and their witness.

At the outset of the hearing I noted the tenant had submitted documentary evidence late contrary to the Rules of Procedure requirement to have all evidence served at least 5 days prior to the hearing. The evidence was received by the Residential Tenancy Branch on December 17, 2010.

The guidance provided to Dispute Resolution Officers is that "at least" excludes the day the evidence was received by the branch; the day of the hearing and any weekend days. In accordance with this guidance this evidence should have been received no later than December 15, 2010. I have not considered this documentary evidence.

The tenant also confirmed that they were not seeking an order of possession, as such, I amend the tenant's Application to exclude this matter.

I also note the landlord verbally requested an order of possession should the tenant not be successful in his application to cancel the notice to end tenancy.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel 1 Month Notice to End Tenancy for Cause; to a monetary order for compensation for damage or loss; for an order to have the landlord comply with the *Act*, regulation or tenancy agreement, pursuant to Sections 47, 67, and 72 of the *Act*.

If the tenant is not successful in his application it must also be decided if the landlord is entitled to an order of possession, pursuant to Section 55 of the *Act*.

## Background and Evidence

The tenancy began on January 1, 2009 as a month to month tenancy for a monthly rent of \$375.00 due on the 1<sup>st</sup> of each month and a security deposit of \$187.50 was paid on or before January 1, 2009.

The landlord provided a copy of a Dispute Resolution decision from a hearing between these two parties dated October 21, 2010. The decision records that the parties entered into the following settlement agreement:

1. The tenant committed to send written notice to all of the tenants in his building and to the landlord that he will no longer be lending videos under any circumstances. The tenant committed to post this notice on his door;
2. Once a first floor living unit becomes available in his building, the tenant agrees to relocate to that unit;
3. If traffic to and from the tenant's premises does not decrease to an acceptable level as a result of these measures, the landlord reserves the right to issue another notice to end tenancy;
4. If a larger living unit becomes available within the tenant's building, the landlord may give the tenant an opportunity to relocate there; and
5. Under the terms of this agreement the landlord withdraws the 1 Month Notice to End Tenancy for Cause.

The landlord alleges the tenant breached this agreement and issued a 1 Month Notice to End Tenancy for Cause on December 1, 2010 with an effective date of January 31, 2011 citing the tenant is in non-compliance with an order under the legislation within 30 days after the tenant received the order or the date in the order.

The landlord contends the tenant failed to comply with points 1, 2 and 3 of the above noted agreement. The landlord testified that the tenant failed to post on his door a notice that he would not be lending videos to other tenants in the building; to send a copy of this notice to all the tenants and provide a copy to the landlord.

The landlord also contends that the tenant failed to move into a rental unit that became available on the first floor and that the tenant has failed to decrease the traffic to and from the tenant's rental unit to an acceptable level.

The tenant asserts that he did post a notice on his door twice but that both times the notice was ripped down very shortly after the notice was posted. One of the tenant's witnesses testified that he saw the notice on the tenant's door at 10:00 a.m. one day in November 2010. The tenant confirms that he did not provide a notice to each of the tenants or to the landlord.

The tenant testified that he had started moving into the new rental unit on the first floor but discovered some bedbugs and sought confirmation from the landlord as to whether or not the unit had been treated and was ready for occupancy. The landlord provided documentary confirmation to this hearing that the unit was treated and no activity had been found in this unit as of November 25, 2010.

The tenant however states he was told that one treatment had been completed and that another treatment was due to be completed on November 29, 2010 but that he was never informed of the outcome of that treatment and so did not know if the unit was ready to occupy.

The landlord also contends that the volume of traffic in and out of the tenant's rental unit has not reached an acceptable level. The landlord contends that this tenant has several visits per day. The landlord's witness testified that the tenant had visitors 3 or 4 times a week.

The tenant contends that it is the nature of the building that most tenants have visitors coming and going all the time; that this tenant has merely adjusted to the social norm of the residential property and that other tenants are not restricted by the landlord in terms of visitors. The tenant's witnesses provided testimony supporting the tenant's assertion.

The tenant suggests that this notice issued by the landlord is frivolous and vexatious and seeks an order to have the landlord be prohibited from issuing any further notices to end tenancy for these causes. The tenant also seeks \$2,500.00 for punitive and aggravated damages as a result of what the tenant sees as an ongoing harassment by the landlord on these issues.

## Analysis

Section 63 of the *Act* states that if the parties involved in a dispute, settle that dispute during the dispute resolution proceedings the director may record the settlement in the form of a decision or an order.

Section 47 states that a landlord may end a tenancy if the tenant has not complied with an order of the director within 30 days of receiving the order or a date specified in the order for the tenant to comply.

In the decision dated October 21, 2010 Dispute Resolution Officer (DRO) XXXXXXXX makes reference to Section 63 indicating "...the settlement may be recorded in the form of a decision." As such and upon a full review of the decision written by DRO XXXXX I find the settlement was recorded in the form of decision and not in the form of an order.

The wording of Section 47 speaks only to the landlord being able to end a tenancy if the tenant has not complied with an *order* made by the director. As the agreement was written as a decision and not an order, I find the landlord has failed to establish that the tenant is in non-compliance with an order made by the director.

While the decision itself, under point 3, states the landlord retains the right to issue a notice to end the tenancy if the traffic to and from the tenant's premises does not decrease to an acceptable level, the notice cannot be based on the tenant being non-compliant with an order.

In relation to the tenant's claim that the notice issued by the landlord was frivolous and vexatious, I accept that the tenant did breach the settlement agreement, at least on one point; that he failed to provide the landlord with or distribute to each tenant a copy of his notice that he would not be lending out videos or DVDs. As such, I accept that the landlord felt that he had received an order that the tenant was not compliant with and therefore had grounds to end the tenancy.

As to the tenant's claim that the landlord was exhibiting an ongoing harassment of the tenant, while I find the landlord's expectation of "an acceptable level of traffic to and from the tenant's unit" to be extremely vague and to not have much meaning in terms of how this may be grounds for ending a tenancy, I find the tenant has failed to establish a pattern of harassment on this or any other issue.

## Conclusion

For the reasons above, I grant that the tenant may cancel the 1 Month Notice to End Tenancy for Cause dated December 1, 2010 and find the tenancy in full force and effect.

As the tenant has failed to establish any that landlord has harassed the tenant in regards to these matters, I dismiss the part of the tenant's Application for compensation for damage or loss.

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: December 23, 2010.

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Residential Tenancy Branch