



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      CNC, OLC, RR, O  
                                 OPC, FF

### Introduction

This hearing dealt with cross applications by the tenant and landlord. The tenant's application is to cancel a notice to end tenancy for cause, to order the landlord to comply with the Act, allow a tenant to reduce rent for services not provided and other. The landlord's application is for an order of possession for cause and recovery of the filing fee. The tenant participated in the conference call hearing but the landlord did not. The tenant presented evidence that the landlord was served with the application for dispute resolution and notice of hearing. The landlord would also have been in possession of hearing documents for their application which specifies the same date, time and pass codes for the hearing. I found that the landlord had been properly served with notice of the tenant's claim and the date and time of the hearing and the hearing proceeded in their absence.

### Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

### Background and Evidence

This tenancy started in February 2009 with monthly rent of \$900.00, the tenants paid a security deposit of \$450.00. On March 7, 2011 the landlord served the tenants a 1 Month Notice to End Tenancy for Cause: seriously jeopardized the health or safety or lawful right of another occupant or the landlord; put the landlord's property at significant risk.

The tenant testified that on February 21, 2011 the landlord served all tenants 24 hours notice that monthly suite inspections would be conducted. This same notice also advised all tenants with storage lockers that they had to have their storage lockers cleared out by February 25, 2011 or the *'locks will be replace and the belongings will be going to the garbage'*.

The tenant testified that when he moved into the rental unit in 2009, and although it is not noted on the tenancy agreement, he had use of a storage locker for his own

personal use. The tenant stated that after his storage locker was broken into, the resident manager at that time offered to provide ½ of the storage locker she used to the tenant and gave the tenant possession of the storage locker for his personal use. The tenant stated that he has had the keys to the storage locker and kept it in his use since 2009.

The tenant testified that the landlord/resident manager had stated that he wanted all the storage lockers empty so that he could use them for his company. The tenant stated that the landlord did not give a 30 day notice on the proper form, did not offer the tenant a different locker to use or agree to compensate the tenant for loss of this facility through a rent reduction. The tenant stated that he had tried to speak to the landlord about the situation but that the landlord refused to discuss the matter.

The tenant stated that when he did not remove all of his belonging out of the storage locker the landlord gave him the 1 month notice to end tenancy for cause. The landlord also gave the tenant a copy of the Maple Ridge Fire Department, Fire Company Inspection Order which concerned the tenant enough that he went to the fire department to see if the issues noted on the report were a result of his tenancy; they were not. The tenant stated he has had to move his bed into the living room of his rental unit and use his bedroom as a storage facility for the items he had in the locker.

The tenant in this application is seeking to cancel the 1 month notice to end tenancy for cause, seeking an order for the landlord to comply with the *Act* and seeking a rent reduction for facilities not provided.

### Analysis

Based on the documentary evidence and undisputed testimony of the tenant and In the absence of any evidence to the contrary from the landlord, I find on a balance of probabilities there is insufficient evidence to have the 1 Month Notice to End Tenancy for Cause upheld. Accordingly, the notice to end tenancy is hereby set aside and the tenancy continues in full force and effect.

I also find that as the tenant has had possession of the storage unit for a period of two years, and although assignment of the storage locker is not noted on the tenancy agreement, it is reasonable to determine that the continued use of this facility has become part of the tenant's tenancy. Therefore per Section 27 of the *Act*, the landlord must provide the tenant with 30 days written notice, on the approved form and reduce the rent as outlined if the landlord wants to terminate this facility.

Until such time as the landlord has complied with Section 27 of the *Act*, the landlord is hereby Ordered to give the tenant full, unrestricted use of the storage locker. If the landlord does not comply with the *Act* and terminates or restricts the tenant's use of the storage locker without providing proper notice and reduction of the rent in an amount

equivalent to the reduction in value to the tenancy, the tenant will be entitled to a rent reduction of \$50.00 per month.

As the tenant has lost the use of the storage unit for the month of March 2011, the tenant is entitled to with-hold an amount of \$50.00 from his rent.

As the landlord did not participate in the hearing their application is dismissed in its entirety without leave to reapply.

### Conclusion

The 1 Month Notice to End Tenancy for Cause dated March 7, 2011 is hereby set aside and the tenancy continues in full force and effect.

The landlord is hereby Ordered to comply with Section 27 of the *Act* and must provide the tenant with 30 days written notice, on the approved form and reduce the rent as outlined in the *Act* if the landlord intends to terminate the tenant's use of the storage locker/facility.

If the landlord does not comply with Section 27 of the *Act* and terminates the facility, the tenant will be entitled to a rent reduction of \$50.00 per month.

The tenant is entitled to with-hold an amount of \$50.00 from his rent for loss of the facility for the month of March 2011.

The landlord's application is dismissed in its entirety without 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: March 30, 2010

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Residential Tenancy Branch