



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Public Safety and Solicitor General

## DECISION

Dispute Codes      CNC, CNL, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause pursuant to section 47;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant confirmed that the landlord handed him a 1 Month Notice to End Tenancy for Cause on March 31, 2011 (the 1 Month Notice). The landlord confirmed that the tenant handed him a copy of the landlord's dispute resolution hearing package on April 5, 2011. I am satisfied that the parties served one another with these documents in accordance with the *Act*.

As the parties agree that the landlord has not served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use of Property, the tenant's request to cancel the 2 Month Notice is withdrawn.

### Issues(s) to be Decided

Should the landlord's 1 Month Notice to end Tenancy for Cause be cancelled? Is the tenant entitled to an Order requiring that the landlord comply with the *Act*?

### Background and Evidence

This month-to-month tenancy commenced on August 1, 2010. Monthly rent is set at \$625.00, payable in advance on the first of the month. The landlord continues to hold the tenant's \$300.00 security deposit.

The tenant applied for a cancellation of the landlord's 1 Month Notice because the landlord is seeking to use the property himself. The tenant said that the landlord issued

the wrong Notice to End this Tenancy. He said that if the landlord's intention to end this tenancy was for Landlord's Use of Property he should have issued a 2 Month Notice to End Tenancy for Landlord's Use of Property.

The landlord confirmed that he issued the 1 Month Notice with the intention of using the rental unit himself. The landlord failed to complete his 1 Month Notice and did not identify any reason on the Notice or orally as to why he was seeking an end to this tenancy for cause.

### Analysis

Section 47 of the *Act* outlines many reasons why a landlord may end a tenancy for cause. Although the landlord completed page 1 of Form #RTB-33, the 1 Month Notice to End Tenancy for Cause, the landlord did not identify any reason for issuing this Notice on page 2 of that Form.

Section 47(3) of the *Act* requires that a notice under this section must comply with section 52 of the *Act* regarding the form and content of the notice to end this tenancy. Section 52(d) and (e) of the *Act* read in part as follows;

- 52     *In order to be effective, a notice to end a tenancy must be in writing and must...*
- (d)     *except for a notice under section 45(1) or (2) [tenant's notice], state the grounds for ending the tenancy, and*
  - (e)     *when give by a landlord, be in the approved form...*

The landlord's failure to identify a reason for issuing his 1 Month Notice is grounds to cancel that Notice.

Based on the undisputed written and oral evidence presented by the parties, the landlord intended to end this tenancy because he plans to use the rental suite himself. The landlord would have to issue a notice of this type to the tenant pursuant to section 49(3) of the *Act* which reads as follows:

*49(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.*

Section 51(1) of the *Act* requires a landlord who issues a 2 Month Notice to End Tenancy for Landlord's Use of Property to provide to the tenant on or before the effective date of the landlord's notice an amount that is the equivalent of one month's

rent payable under the tenancy agreement. Section 51(2) of the *Act* allows the tenant to withhold the above amount from his last month's rent.

As I find that the landlord did not properly identify any reasons for issuing a 1 Month Notice to End Tenancy for Cause and, in fact, appears to have issued that notice for grounds that could only be issued as a 2 Month Notice to End Tenancy for Landlord's Use of Property, I cancel the landlord's 1 Month Notice to End Tenancy for Cause.

#### Conclusion

I allow the tenant's application and find that the landlord's 1 Month Notice to End Tenancy for Cause is cancelled with the effect that this tenancy continues.

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*.