



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant to cancel a notice to end tenancy for cause.

The parties appeared at the teleconference hearing, acknowledged service of the hearing documents, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, and in documentary form..

### Issue(s) to be Decided

1. Has a 1 Month Notice to End Tenancy been issued and served in accordance with the *Residential Tenancy Act*?
2. If so, has the Landlord met the burden of proof to uphold this Notice to end the tenancy?

### Background and Evidence

Both parties made reference to a dispute resolution hearing they had attended in March 2011 when the Tenant was successful in having a previous notice to end tenancy cancelled. Based on the aforementioned I advised I would be reviewing the March 2011 decision and would be taking it into consideration when making my decision.

The tenancy began May 22, 2010 for a single room occupancy unit that is approximately 200 square feet, has a toilet and shower facilities, and a two burner stove, fridge and sink. Rent is due on the first of each month in the amount of \$440.00 a security deposit of \$220.00 was paid.

The Landlord's Agent testified that while she has not been present for the day to day business she is aware of what has been going on with this Tenant's behaviour. She advised that his conduct and lifestyle does not fit as it is affecting other tenants. He has set off the fire alarms, his music and television is loud at night disturbing other tenants,

and his suite is in appalling condition. They have issued the Tenant notices as per the copies provided in their evidence. They also provided photos of the condition of his unit which were taken in June 2011 and back in December 2010 which indicated there has been no change in the condition of his unit even after several warnings and attempts to have him clean it up.

The Landlord initially testified the tenancy began sometime in August 2010 and then later corrected the date after it was pointed out by the Agent and the Advocate. He testified that he had served the 1 Month Notice May 24, 2011, in person to the Tenant in the presence of a witness. He confirmed that all other written notices were served in person in addition to several verbal conversations with the Tenant.

The Landlord advised that since the beginning of his employment in April 2011 they have been working with the Tenant to get his room cleaned up and have had to deal with noise complaints about the Tenant. The Tenant has been caught on their security video pulling the fire alarm on the 6<sup>th</sup> floor. In total the Tenant has pulled the fire alarm three times, once in April 2011 and twice during the evening of May 28, 2011. He later stated that the Tenant pulled the fire alarm twice and the third occasion the Tenant caused a fire and smoke in his room to set off the fire alarm. He received complaints from the other tenants for having to stand outside at 1:00 a.m. because of these fire alarms being pulled.

The Witness testified he was in attendance with the Landlord on May 24, 2011 and he witnessed the Tenant being served the 1 Month Notice in person, from the Landlord's hand to the Tenant's hand.

The Advocate questioned the above parties and drew into question the date the 1 Month Notice was served. It was later determined and confirmed by the Landlord that the 1 Month Notice was served on May 29, 2011 together with the two letters dated May 29, 2011 which were also included in the Landlord's evidence.

In determining timelines the Advocate and Landlord discussed when inspections of the Tenant's unit occurred. The Landlord confirmed he conducted an inspection May 18, 2011, a follow up inspection was conducted June 8, 2011 and the Municipality conducted an inspection on June 9, 2011 at about 3:00 p.m. The photos were taken June 10, 2011.

The Tenant testified he was intoxicated and does not remember pulling the alarms. Later in the hearing he confirmed he had apologized for pulling the fire alarm and they accepted his apology. He stated that he must have been intoxicated because he could

not remember doing it. He says he does not recall when he actually received the 1 Month Notice however he does recall stepping on it in his apartment and he does not recall ever receiving the written notices prior to having dispute resolution hearings and getting evidence from the Landlord. He argued that he could not be held responsible for the loud noise as there is a cabaret and bar in their building that plays loud music. There is also construction going on where the entire first floor has been ripped out and is being redone.

In closing the Agent advised the bar and cabaret have been closed for renovations for months so the noise complaints cannot be due to their operation. They are not attempting to evict tenants so they can renovate and raise the rent however they do upgrade the kitchenettes and paint units as they become vacant.

The Advocate and Tenant question whether the notices were verbal or written and when the Tenant actually received them as the Advocate was relating service of documents to dates when the Tenant would come and see him. Each time he tried to associate the Tenant's visits with dates the Tenant stated that he could not remember how many days prior he received a document. The Advocate suggests that if the Notice was slid under the door it would be deemed served similar to if it was posted to the door therefore the effective date of the notice would be July 31, 2011. He further suggests that the Landlord has failed to meet the burden of proof that it was the Tenant who pulled the fire alarm. Furthermore the Tenant's room passed the Municipal inspection and he has made an effort to clean of his room even though he is restricted due to recent surgery on his shoulder.

The Landlord confirmed he had made an error in dates of when documents were served however he knows for certain that all written notices and documents were served personally to the Tenant shortly after they were issued. He contends the 1 Month Notice was served in person on May 29, 2011. He pointed out that the Tenant admits to being intoxicated and not remembering things which could explain why he does not remember being personally served. He is getting complaints from other tenants about noise after midnight and as late as 4:00 a.m. as supported by the letters in his evidence. They have worked with the Tenant to get his room cleaned up however it continues to be in a horrible state with cockroaches crawling in and out and affecting neighbours. This prevents the Landlord from bringing in a pest control company because the room is such a mess they could not treat the unit for bugs. They also have the video evidence of the Tenant pulling the fire alarms and information from other tenants who saw him do it. This is also noted in their log book. The tenants are complaining about having to go outside in the early morning each time he pulls the alarm.

## Analysis

I have carefully considered the aforementioned, the March 11, 2011 dispute resolution decision, and the documentary evidence which included, among other things, a copy of the 1 Month Notice, photos of the rental unit, various letters issued to the Tenant from the Landlord, and a written complaint from another tenant.

The 1 Month Notice to End Tenancy cited the following reasons for issuance:

***The tenant or a person permitted on the property by the tenant has:***

- Significantly interfered with or unreasonably disturbed another occupant or the landlord
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- Put the landlord's property at significant risk

***Tenant has engaged in illegal activity that has, or is likely to:***

- damage the landlord's property
- adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- jeopardize a lawful right or interest of another occupant or the landlord

***Tenant has caused extraordinary damage to the unit/site or property/park***

I am required to consider the Landlord's evidence not on the basis of whether his testimony "carried the conviction of the truth", but rather to assess his evidence against its consistency with the probabilities that surround the preponderance of the conditions before me.

While the date a notice is issued and the date it is actually served can confuse participants during a hearing, I find, on a balance of probabilities, the 1 Month Notice to End Tenancy was served to the Tenant in person, as supported by the Witness testimony. I further find that the date of service was May 29, 2011 as the evidence supports it was served the same day the two letters were issued. Therefore, as per the aforementioned the effective date of the notice is June 30, 2011, pursuant to Section 47(2) of the Act.

Upon reviewing the grounds selected for why this Notice was issued I note there is no evidence before me to support the Tenant has engaged in illegal activity nor is there evidence to support the Tenant has caused extraordinary damage to the unit/site or

property/park. Therefore I find the Landlord's application to end the tenancy on these grounds must fail.

For the remaining three grounds that the Tenant significantly interfered with or unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and put the landlord's property at significant risk; I find as follows:

In considering the reasonable person test, I find that after the Tenant attended the dispute resolution hearing on March 21, 2011, he ought to have known that if he fails to comply with the material term of his tenancy agreement and clean up his unit then he would be evicted. That being said I accept the Landlord's testimony that the Tenant was personally served with the notice dated May 24, 2011 and the Tenant has failed to comply and have his room cleaned up, as supported by the photographic evidence which was taken June 10, 2011.

I accept the Landlord's testimony that the Tenant has been seen on their security video pulling the fire alarm on April 11, 2011 which has caused disruption to all the tenants in the entire building. A warning letter was issued April 11, 2011 and I accept the Landlord's testimony that this letter was personally served to the Tenant. The Tenant admits to apologizing to the Landlord for this action however he states he cannot remember pulling the alarm because he was intoxicated. The Tenant's behaviour has continued and it is alleged that he started a fire in his room to create enough smoke to cause the fire alarms to be activated.

Based on the aforementioned, I find the Tenant's behaviour to be escalating in a manner that puts the Landlord and other tenant's health and safety at significant risk in addition to causing risk of damage to the Landlord's property. I further find that the Tenant's behaviour is significantly interfering with or unreasonably disturbing other tenants and the landlord.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of the Act and I find that it was served upon the Tenant in a manner that complies with the Act. Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice; therefore the Notice is upheld.

### Conclusion

I HEREBY DISMISS the Tenant's application, without leave to reapply.

The 1 Month Notice to End Tenancy is in full force and effect and the effective date is June 30, 2011, at which time the tenancy ends and the Tenant must vacate the unit.

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: June 28, 2011.

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Residential Tenancy Branch

