



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

Landlord: OPC, FF  
Tenant: MT, CNC, OLC, OPT

### Introduction

This hearing dealt with the cross Applications for Dispute Resolution. The landlord sought an order of possession and the tenant sought more time to cancel a notice to end tenancy; to cancel a notice to end tenancy; and to an order of possession. The hearing was conducted via teleconference and was attended by two agents for the landlord and the tenant's agent.

Despite the tenant's Application for an order of possession, as the tenant still resides in the rental unit, I find there is no need for the tenant to obtain an order of possession and I amend the tenant's Application to exclude this portion of tenant's Application.

### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause and to a monetary order to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 49, 55, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to more time to apply to cancel a notice to end tenancy and to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to Sections 49 and 66 of the *Act*.

### Background and Evidence

The parties confirmed the tenancy began on March 1, 2010 as a month to month tenancy for a current monthly rent of \$613.00 due on the 1<sup>st</sup> of each month with a security deposit of \$300.00 paid.

Both parties submitted a copy of a 1 Month Notice to End Tenancy for Cause issued on April 27, 2012 with an effective vacancy date of May 31, 2012 citing the tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant's agent submitted that due to a mental health condition the tenant was unable to understand the requirement to file an Application to seek to cancel the Notice

within 10 days and it was only upon consultation between the tenant's agent and legal counsel in late May 2012 that they realized they could dispute the Notice.

The tenant's agent also testified the landlord did not have evidence that the incidents the landlord refers to in relation to ending the tenancy were specifically caused by this tenant.

The landlord's agent submitted that they had received several complaints from neighbouring tenants, since this notice was issued, as well as from the establishment next door who claim the tenant has been bothering patrons verbally and by physically throwing things at them, in one case a chair.

The landlord's agent testified that there had been no issues with this tenant throughout the tenancy except for in November 2011 at which time the agent spoke with the tenant and warned him of the problems with this behaviour.

In addition to copies of correspondence dated after the issue date of the Notice, the landlord provided copies of the following correspondence:

- A letter from the landlord to the tenant dated April 27, 2012, referring to Section 17 of the tenancy agreement in relation to a complaint received from the neighbouring establishment and reminding the tenant that these disturbances have continued despite a warning letter on November 21, 2011 (not provided into evidence).; and
- A letter dated April 27, 2012 from the neighbouring establishment lodging a complaint that a "young man leaned out of a window on the north side of the.... building, and began yelling at our patrons waiting in line to enter our nightclub. He then threw an empty beer can, followed by a glass, and then a wooden chair out of the window.";

### Analysis

Section 66 of the *Act* allows an extension in a time limit established by this *Act* only in exceptional circumstances. From the undisputed testimony from the tenant's agent I accept the tenant did not have the capacity, at the time the Notice to End Tenancy was issued, to understand his rights to seek to cancel the notice.

While I acknowledge that both parties agree that the tenant's agent was aware of the notice on or before April 30, 2012, no testimony was provided that confirmed the agent was provided with a copy of both pages of the Notice itself, which outlines all the rights and obligations under the *Act* as it relates to the Notice.

For these reasons, I find exceptional circumstances warrant granting the tenant more time to apply to cancel the 1 Month Notice to End Tenancy for Cause issued on April 27, 2012.

As such, I must consider the merits of the landlord's Notice. Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if the following applies:

- The tenant
  - i. Has failed to comply with a material term, and
  - ii. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

As the landlord has indicated that the reason to end the tenancy is based on the tenant's breach of a material term and not necessarily that the tenant's behaviour has disturbed other occupants the landlord must not only show the tenant breached the material term but also that the landlord provided him with written notice to correct it and then provided him with a reasonable time to correct the behaviour.

From the evidence provided I find the landlord has established that the tenant's behaviour was in breach of Section 17 of the tenancy agreement, however as the landlord failed to provide a copy of the warning letter issued on November 21, 2011 I cannot determine if that warning letter specifically spoke to the breach of a material term or only of the behaviour.

As such, I find the landlord has failed to provide evidence that the tenant was provided with written notice to correct the breach.

### Conclusion

For the reasons noted above, I find the tenant is entitled to cancel the 1 Month Notice to End Tenancy issued on April 27, 2012. However, I caution the tenant that the Notice itself provides sufficient warning to the tenant that should he continue to breach this clause the landlord may consider his inaction to constitute a failure to correct the situation within a reasonable time and provide cause, under Section 47, to end the tenancy.

In addition, I dismiss the landlord's Application in its entirety.

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 04, 2012.

---

Residential Tenancy Branch