



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNC

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order allowing more time to make an application to cancel a notice to end tenancy – Section 66; and
2. An Order Cancelling a Notice to End Tenancy for Cause - Section 47;

The Tenant and Landlord were given full opportunity to be heard, to present evidence and to make submissions.

### Issue(s) to be Decided

Is the Tenant entitled to more time to make the application?

Is the Notice to end tenancy valid?

Is the Tenant entitled to a cancellation of the Notice to end tenancy?

### Background and Evidence

The tenancy is a shared house accommodation where each tenant has exclusive use of a bedroom and the rest of the unit is shared. The Landlord does not live in the unit.

On July 3, 2012, the Landlord served the Tenant with a Notice to end Tenancy for Cause (the “Notice”). The effective date of the Notice is stated as August 3, 2012 and sets out the following causes:

1. The tenant has engaged in illegal activity that has, or is likely to
  - a. Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;

- b. Jeopardize a lawful right or interest of another occupant or the landlord.
- 2. The tenant or a person permitted on the property by the tenant has:
  - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - b. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The Tenant filed an application to dispute the Notice on July 24, 2012. The Tenant states that he was admitted to hospital in intensive care on July 8, 2012 and remained in hospital for three weeks. The Tenant states that he was on a lot of meds and that at some point he was reminded about the Notice. The Tenant states that he spoke with a lawyer and a poverty action group and was told to make an application to dispute the Notice and the effective date of the Notice. The Landlord states that on July 20, 2012, the Tenant's social worker called the Landlord and that the Landlord understood that the tenant was in the hospital and argues that the Tenant has provided no other proof that he was in the hospital as early as stated by the Tenant.

The Landlord states that he gave the Tenant a letter dated July 2, 2012 and that this letter sets out his evidence. The Landlord states that the other tenants are afraid of the Tenant due to his outbursts. The Landlord states that one of these tenants has since left, partly because he did not feel safe with the Tenant in the unit. The Landlord states that the other two tenants are also afraid and that the Landlord has emails from these tenants in relation to their concerns but did not supply these as evidence. The Landlord states that he personally witnessed one incident where the Tenant came to the door of another tenant shouting and looking "pretty angry". The Landlord states that his wife also was present on one occasion when the Tenant was "flailing" and swinging a bat in the kitchen.

The Tenant states that the incident witnessed by the Landlord followed the Tenant witnessing this other tenant entering his unit after which cigarettes and money was missing. The Tenant states that the incident in the kitchen was only him swinging the

bat because he was headed to the park but that it was not a violent incident at all. The Tenant states that he is not a violent person. The Landlord states that the Tenant was an excellent tenant but that the other tenants are concerned and that the Landlord had to take action because of the other tenants.

### Analysis

Section 53 of the Act provides that incorrect effective dated are automatically corrected as follows:

- (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.
- (2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.
- (3) In the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement
  - (a) that complies with the required notice period, or
  - (b) if the landlord gives a longer notice period, that complies with that longer notice period.

As the Notice is dated and was served on July 3, 2012, I find that the correct effective date of the Notice would be August 31, 2012 and that the date of the Notice is automatically corrected to this date.

Section 47 of the Act requires that upon receipt of a Notice to end Tenancy for Cause, the tenant may, within ten days of receiving the notice, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does not dispute the Notice, the tenant is conclusively presumed to have accepted that

the tenancy ended on the effective date of the notice and must vacate the unit by that date. Section 66 of the Act provides that a time limit, such as the ten day limit noted above, may be extended only in exceptional circumstances. In considering the Tenant's evidence that he was in hospital during and following the 10 day period provided to make an application to dispute the Notice, I find that the Tenant's evidence was presented clearly, cogently and had a ring of truth to it. Considering this and given the Landlord's evidence that the Tenant was in hospital on July 20, 2012, I find that the Tenant has shown on a balance of probabilities that he was in the hospital as stated. Accepting the serious nature of the hospitalization and accepting that medication would impede the Tenant's ability significantly, I find that the Tenant is entitled to more time to make the application.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Although one of the causes listed on the Notice is in relation to illegal activity, as the Landlord presented no evidence of illegal activity, I find that this cause has not been established. Given the lack of tenant evidence of disturbance by the Tenant such as copies of the emails from these tenants and considering the Tenant's evidence in relation to the other tenants and the two incidents witnessed by the Landlord and his wife, I find that the Landlord has not shown on a balance of probabilities that the Tenant has significantly interfered, disturbed or jeopardized anybody or anything. As a result, I find the Notice to be invalid and that the Tenant is entitled to a cancellation of the Notice. The tenancy therefore continues.

### Conclusion

The Notice is invalid, is cancelled and the 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*.

Dated: August 16, 2012.

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Residential Tenancy Branch