



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes:**

CNC

### **Introduction**

This matter was originally heard on August 16, 2012 and dealt with an application to cancel a *One Month Notice to End Tenancy for Cause* (the "Notice") issued July 12, 2012. On August 16, 2012, the Dispute Resolution Officer found that the Applicant was not a "tenant" as defined by the Act and therefore had no standing to make the Application. The Application was dismissed and an Order of Possession was provided to the Landlord pursuant to the provisions of Section 55 of the Act.

The applicant and an effected third party filed an Application for Review Consideration on August 22, 2012. On August 29, 2012, the review application was granted, the Decision and Order made August 16, 2012 were suspended, and a new Hearing was ordered. This is the new Hearing.

One of the Tenants appeared at the Hearing along with the Applicant, who was identified as the Tenant's agent. I am satisfied that the Applicant has standing to make this Application for Dispute Resolution.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord received a copy of the Review Decision and the Notice of Hearing documents by registered mail.

### **Issue to be Determined**

- Should the Notice be upheld or cancelled?

### **Background and Evidence**

A copy of the tenancy agreement was provided in evidence. This tenancy began on August 1, 2011. Rent is \$1,580.00, due on the first day of each month. Rent does not include utilities. The Tenant paid a security deposit in the amount of \$790.00 on August 1, 2011.

The rental unit is one of four units on the rental property. The occupants in the rental property all have access to one parking space. One of the occupants also has access

to a garage which is attached to the occupant's unit. There is also a detached garage at the back of the common area.

On July 12, 2012, the Landlord issued the Notice. The Owner testified that the Landlord posted the Notice on the Tenant's door on July 12, 2012. The Tenant stated that it was placed through the mail slot. In any event, I find that the Tenant received the Notice on July 15, 2012, pursuant to the provisions of Section 90 of the Act. The Tenant's agent filed the Application for Dispute Resolution on July 23, 2012, which is within the 10 days allowed under Section 47 of the Act.

The Notice provides the following reasons for ending the tenancy:

Tenant is repeatedly late paying rent.

Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Owner stated that the Tenant did not pay rent for the month of November, 2011, and only paid partial rent for the month of June, 2012. The Owner stated that the Landlord was also having difficulties accessing the Tenant's e-transfer of funds to the Landlord's bank account for September and October's rent payments.

The Tenant's agent testified that he is a contractor and that he did work on the water system at the rental unit at the Landlord's request. He stated that he and the Landlord had an agreement that rent for November, 2011 would not have to be paid in lieu of the work performed. The Owner and the Landlord's witness disputed this. The Landlord was not available to give testimony at the Hearing.

The Tenant's agent stated that overpayment of utilities were deducted from June's rent.

The Owner testified that the Tenant has gained illegal entrance to a detached garage on the rental property and has changed the locks to the garage without the Landlord's knowledge or consent. She stated that the detached garage is not included in the tenancy agreement. She stated that the parties had discussed the Tenant's use of the garage, but that there would be an additional charge if the Tenant wished to use it. She testified that the parties did not come to an agreement with respect to the Tenant using the detached garage. The Owner stated that the Landlord's use of the detached garage is a material term of the tenancy agreement.

The Tenant's agent acknowledged that he had changed the locks to the garage. He stated that the garage was included in the rental agreement.

## **Analysis**

I explained to the parties that the only matter that was before me was the Tenant's agent's Application to cancel the Notice that was issued on July 12, 2012. If the parties have other issues, which they cannot settle between themselves, they are at liberty to file and serve the other party with additional applications.

When a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to provide sufficient evidence that the tenancy should end for the reasons provided on the notice to end tenancy.

### **Is the Tenant repeatedly late paying rent?**

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice to end tenancy under Section 47(1)(b) of the Act. I find that the Landlord did not provide sufficient evidence that, as of the date that the Notice was issued, the Tenant had been late paying rent three times. Therefore, I find insufficient evidence that the tenancy should end for this reason provided on the Notice.

The Tenant was warned that rent cannot be withheld arbitrarily by the Tenant and that it must be paid when it is due. The Tenant was cautioned about the provisions of Section 26 of the Act.

### **Did the Tenant breach a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so?**

In order to support this reason to end the tenancy, the Landlord must provide sufficient evidence that the Tenant:

1. breached a **material term** of the tenancy agreement; and
2. that the breach was not corrected within a reasonable time after **written notice** to do so.

Residential Tenancy Policy Guideline 8 provides, in part:

“A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;

- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.”

A term with respect to use of the detached garage is not included in the tenancy agreement. Therefore, I find that it is not a material term.

I further find that the Landlord provided insufficient evidence that he had informed the Tenant in writing that he believed the Landlord's use of the detached garage was a material term of the tenancy agreement; or that the Landlord provided a deadline to correct the breach; or that the Landlord would end the tenancy if the problem was not fixed by a deadline.

For these reasons, I find that the Landlord has not provided sufficient evidence that the tenancy should end for the second reason provided on the Notice.

I find that the Notice is not an effective notice to end tenancy and therefore the Tenant's application to cancel it is granted. The tenancy remains in full force and effect until it is ended in accordance with the provisions of the Act.

The Decision and Order dated August 16, 2012 are cancelled.

It is important to note that the tenancy agreement does not stipulate that the detached garage is part of the agreement. I find that that it is therefore **not** part of the agreement and hereby order the Tenant to immediately provide the Landlord with the keys to the detached garage and to immediately cease use of the detached garage without the Landlord's express permission.

### **Conclusion**

The Tenant's application is granted. The Notice is cancelled. The tenancy will continue until it is ended in accordance with the provisions of the Act.

The Decision and Order dated August 16, 2012 are cancelled.

I find that the detached garage is not part of the tenancy agreement. The Tenant is hereby ordered to provide the Landlord with the keys to the detached garage and to immediately cease use of the detached garage without the Landlord's express permission.

The Tenant is warned that rent must be paid when it is due whether or not the Landlord complies with the Act, regulation or tenancy agreement unless the Tenant has a right under the Act to deduct all or a portion of the rent. A tenant's failure to pay rent when it is due, or to repeatedly pay rent late, are sufficient reasons for a landlord to issue a notice to end the tenancy under Sections 46 or 47 of the Act.

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: October 03, 2012.

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Residential Tenancy Branch