



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, ERP

### 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 (the 1 Month Notice) pursuant to section 47; and
- an order to the landlord to make emergency repairs to the rental unit pursuant to section 33.

Both parties, including the co-tenant listed on the initial Residential Tenancy Agreement (the Agreement) attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another.

The landlord testified that she posted the 1 Month Notice on the tenants' door on October 22, 2012. Her husband gave sworn testimony that he witnessed his wife post this notice on the tenants' door at 9:15 a.m. that day. The tenant and her daughter (both identified as tenants on the Agreement and the landlord's 1 Month Notice) testified that they never received the 1 Month Notice until the applicant's daughter called the landlord on or about October 30, 2012 to obtain a copy of that Notice, referred to in conversations with the landlord.

Based on the sworn testimony of the landlord and her husband, I accept that the landlord did post the 1 Month Notice on the tenant's door on October 22, 2012. In accordance with the provisions of section 90 of the *Act*, the 1 Month Notice was deemed to have been served to the tenants on October 27, 2012, the fifth day after its posting.

The landlord confirmed that the tenant handed her a copy of the tenant's application for dispute resolution on November 6, 2012.

At the hearing, the landlord made an oral request for an Order of Possession if the tenant's application to cancel the 1 Month Notice were dismissed.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should an order be issued to the landlord to conduct emergency repairs to the rental unit?

Background and Evidence

The tenant and her daughter signed a one-year fixed term residential tenancy agreement for a tenancy that commenced on January 5, 2007. As per the terms of this agreement, the tenancy continued as a periodic tenancy when the initial term expired. Monthly rent is currently set at \$735.00, payable in advance on the first of each month. The landlord continues to hold a \$345.00 security deposit for this tenancy.

The landlord entered into written evidence a copy of the 1 Month Notice. In that Notice, requiring the tenants to end this tenancy by November 30, 2012, the landlord cited the following reason for the issuance of the Notice:

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;...*

The landlord submitted a number of documents signed by tenants in this building in which other tenants maintained that Tenant EP has significantly interfered with or unreasonably disturbed them during her tenancy.

The landlord entered into written evidence a copy of a November 1, 2012 notice from the tenant's daughter advising the landlord that she would be paying her last month's rent for this tenancy for November 2012, and ending her responsibility under the tenancy agreement as of the end of November 2012. In that document, the tenant's daughter advised that the tenant's mother would become solely responsible for this tenancy as of December 1, 2012.

At the hearing, the landlord confirmed that the tenant's daughter paid the November 2012 rent, after the landlord issued the 1 Month Notice. The landlord also testified that the tenant has paid rent for December 2012. The landlord said that no receipts have been issued for these payments. The tenant gave undisputed testimony that she understood that the landlord had allowed her to continue living in this rental unit as the sole tenant as of December 1, 2012.

Analysis

Based on the evidence before me, I am satisfied that the tenants have not made application pursuant to section 47(4) of the *Act* within ten days of being deemed to have received the 1 Month Notice. Tenant EP did not request an extension of time to file her application to cancel the 1 Month Notice. As such and in accordance with section 47(5) of the *Act*, the tenant's failure to take this action within ten days led to the end of her tenancy on the effective date of the notice. In this case, this required the tenant to vacate the premises by November 30, 2012, the same date as provided by the tenant's daughter in her notice to end her part of this tenancy.

After issuing the 1 Month Notice, the landlord continued to accept rent cheques from the tenant's daughter for November 2012, and, more importantly, from the tenant for December 2012. The landlord did not dispute the tenants' claims that the landlord has not been providing the tenants with rent receipts for their rent cheques. Had the landlord issued receipts for "use and occupancy only," the landlord could demonstrate that the tenant realized that the landlord's acceptance of money from the tenant(s) did not result in the continuation of this tenancy. However, the landlord took no such action, repeatedly confirming during the hearing that she did in fact accept cheques from both the tenant and her daughter for rent, well after she issued the 1 Month Notice. She confirmed that the tenants' cheques have been cashed and no receipts were issued.

Under these circumstances, I find that the landlord's 1 Month Notice validly issued on October 22, 2012 is no longer in effect because the landlord has accepted rent cheques and in so doing continued this tenancy. I set aside the landlord's 1 Month Notice with the effect that this tenancy continues. I emphasize that the continuation of this tenancy is based solely on the landlord's actions in accepting rent cheques from the tenant and her daughter. I would strongly suggest that if the tenant wishes to continue living in this rental property that she take significant corrective action to ensure that no new complaints are lodged about her interaction with other tenants in this building.

Based on the evidence submitted, I find little reason to issue any orders to the landlord with respect to the installation of new locks or for any other purpose. The landlord has submitted undisputed written evidence that she and her husband have replaced the locks to the tenant's rental unit on at least two occasions at the tenant's request. The tenant has submitted insufficient evidence to warrant the issuance of any repair order to the landlord.

### Conclusion

I allow the tenant's application to cancel the 1 Month Notice. This tenancy continues. I dismiss the tenant's application for the issuance of an order against the landlord for emergency repairs to her rental 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: December 10, 2012

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Residential Tenancy Branch