



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was scheduled to deal with a tenant's request to cancel a 1 Month Notice to End Tenancy for Cause. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

### Preliminary and Procedural Matters

The tenant did not serve a copy of the 1 Month Notice to End Tenancy for Cause that is the subject of this dispute upon the Branch or the landlord. I permitted the tenant to orally describe the content of the Notice and confirmed its accuracy with the landlord. I proceeded to hear from the parties with respect to the reasons for the issuance of the Notice.

In keeping with procedural fairness, since I permitted the tenant to read into evidence the content of his documentation I also permitted the landlord to read into evidence the content of his documentation.

### Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

### Background and Evidence

The tenancy commenced May 2011 and the tenants are required to pay rent on the 1<sup>st</sup> day of every month.

The parties participated in a previous dispute resolution proceeding on December 19, 2012 to deal with the landlord's application to end the tenancy early, under section 56 of the Act. The Arbitrator found that it would not be unreasonable or unfair to wait for a 1 Month Notice to End Tenancy for Cause to take effect.

The landlord served the tenant with a 1 Month Notice to end Tenancy for Cause on January 2, 2013 with a stated effective date of February 3, 2013 (the Notice). The tenant filed to dispute the Notice within the time limit established by the Act. The reasons for ending the tenancy, as provided on the Notice are as follows:

- Tenant or a person permitted on the property by the tenant has:
  - 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
- Tenant has caused extraordinary damage to the unit/site or property/park

Under the tenancy agreement, the electricity is not included in rent. The tenants' hydro account was disconnected for non-payment starting in October 2012, approximately, and remained disconnected until December 12, 2012. Without electricity in the rental unit for so long the smoke detector in the tenants' unit no longer functioned after the back-up battery became depleted.

It was undisputed that there was an outlet in the tenants' unit that was connected to the landlord's common power supply, likely installed prior to the start of this tenancy and prior to this landlord acquiring the property. The tenants were using that outlet in their unit for power but after their hydro was disconnected they overloaded the outlet, requiring the caretaker to reset the breaker twice. With three days of advance notice, the landlord had an electrician disconnect the outlet in the tenants' unit approximately one week prior to November 27, 2012. The tenants began plugging in an extension cord to an outlet in the common hallway and running it under their door into their unit. On November 27, 2012 there was a fire in the rental unit and the smoke detector did not sound. The fire department responded to the fire.

The landlord submitted that he warned the tenants six or seven times to stop running an extension cord to the outlet in the common hallway. The landlord considers this to be stealing and an illegal activity. The tenant denied that he was warned six or seven times. Rather, the tenant explained that since the landlord disconnected the outlet in their unit he felt entitled to take the power from the outlet in the hallway; however, the tenant did not obtain the landlord's consent or authorization to use the extension cord.

The landlord submitted that the rental unit is significantly damaged and restoration work needs to take place. Further, the other tenants in the building are concerned for their safety and 14 other tenants have signed a petition advising the landlord they will end their tenancies if the tenants are not evicted.

The tenant submitted that there was a fire inspection approximately one week prior to the fire and it was noted then that the smoke detector was not working at that time. Further, while it is “assumed” that candles were the cause of the fire because his mother had candles lit in her bedroom where the fire started, the cause has not been proven.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove, based on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice.

Considering the tenancy agreement does not entitle the tenants to receive electricity in their unit at the landlord's expense and the landlord did not authorize the tenant to run an extension cord to the outlet in the hallway I accept that the tenants were unlawfully taking electricity from the landlord. I also find that use of an extension cord to power the tenants' various appliances is not only unlawful but it is dangerous.

As there was no electricity in the rental unit when the fire started, except that brought in by the tenants by way of the extension cord, I find it likely the fire started due to careless use of candles or overloading of the extension cord.

In light of the above, I accept the landlord's position that the tenants' actions or negligence put the health and safety of other occupants in serious jeopardy and the landlord's property at significant risk. I also accept, on the balance of probabilities, that the rental unit is significantly damaged and requires restoration. Therefore, I uphold the Notice and dismiss the tenants' application to cancel the Notice.

Having dismissed the tenants' application to cancel the Notice, I grant the landlord's verbal request for an order of Possession pursuant to section 55 of the Act.

I note that the stated effective date does not comply with the Act. An incorrect effective date does not invalidate a Notice. Rather, the effective date automatically changes to comply. Pursuant to sections 47 and 53 of the Act, the effective date on the Notice automatically changes to read February 28, 2013. The Order of Possession provided to the landlord has an effective date of February 28, 2013.

Conclusion

The tenants' application was dismissed and the landlord has been provided an Order of Possession effective February 28, 2013.

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: February 07, 2013

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Residential Tenancy Branch

