



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **Decision**

### **Dispute Codes:**

CNC, OPT, AS

### **Introduction**

This hearing dealt with an Application for Dispute Resolution by the tenant seeking to cancel a One Month Notice to End Tenancy for Cause. The tenant was also seeking to obtain an order of possession of the rental unit, and obtain an order permitting the tenant to sublet the rental unit.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and all evidence properly served has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

### **Issue(s) to be Decided**

Should the One Month Notice to End Tenancy for Cause be cancelled?

### **Preliminary Issue**

#### **Evidence**

The landlord confirmed receipt of the tenant's evidence. The landlord also testified that that the landlord had submitted evidence to the file as well. According to the landlord, the evidence was delivered to Residential Tenancy Branch on February 25, 2013. The landlord testified that the evidence was also sent to the tenant.

However, the tenant testified that they did not receive the landlord's evidence package.

The Residential Tenancy Rules of Procedure, Rule 4 states that, if the respondent intends to dispute an Application for Dispute Resolution, copies of all available documents or other evidence the respondent intends to rely upon must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at

least five (5) days before the dispute resolution proceeding but if the date of the dispute resolution proceeding does not allow the five (5) day requirement in a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the dispute resolution proceeding.

The "*Definitions*" portion of the Rules of Procedure states that when the number of days is qualified by the term "*at least*" then the first and last days must be excluded.

I find that the landlord's evidence package, which was served on the Residential Tenancy Branch the day before the hearing, failed to arrive within the statutory deadline to be considered at the hearing. I also find that this evidence was not received by the tenant. However, the landlord was permitted to give verbal testimony with respect to the contents of their evidence package and the tenant was permitted to respond.

### One Month Notice

The tenant had applied to obtain an order cancelling the One Month Notice to End Tenancy for Cause.

A copy of this Notice was submitted into evidence by the tenant.

I find that the landlord failed include the date that the Notice was issued and had also failed to sign the Notice. The landlord requested that the Notice still be considered, despite this missing data on the form.

In determining this matter, I find that section 52 Of the Act states that, in order to be effective, a notice to end a tenancy must be in writing and must:

- (a) **be signed and dated** by the landlord or tenant giving the notice, (my emphasis),
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form. (my emphasis)

Given the above, I find that the One Month Notice to End Tenancy for Cause is of no force nor effect as it does not comply with the specific requirements under the Act.

Based on the evidence before me, I hereby order that the One-Month Notice to End Tenancy for Cause is cancelled and of no force nor effect.

Request for Order of Possession By Tenant

The tenant's application included a request for an Order of Possession for the tenant. However, it was established at the outset of the hearing that the tenant already has possession of the rental unit and is living in the rental unit at present.

Section 62 grants an Arbitrator the authority to determine disputes in relation to an application for dispute resolution, and any matters related to that dispute that arise under this Act or a tenancy agreement.

Section 62(4)(b) allows an arbitrator to dismiss all or part of an application for dispute resolution if the application does not disclose a dispute that may be determined.

In this instance I find that there is no dispute with respect to possession of the rental unit. Accordingly I find this portion of the application must be dismissed with leave.

Request To Allow Tenant To Assign Or Sublet The Rental Unit

Although the application indicated that the tenant was seeking an order to permit the tenant to sublet the rental unit, it was established that the tenant did not intend to sublet the unit to a third party.

The tenant stated that this request actually pertained to his right to allow additional occupants to reside in the rental unit, which the landlord was trying to forbid on the basis that it contravenes the Act or agreement.

I find that there genuine issue about subletting in this dispute because the tenant still resides in the rental unit and has not entered into any sublet agreement, nor has the tenant relinquished his possession of the rental unit to a third party. For this reason, I find that this portion of the application fails to disclose a dispute that may be determined. Therefore, I make no findings with respect to this matter and dismiss this portion of the tenant's application with leave.

However, in regard to the tenant's testimony about the landlord's attempt to restrict his use of the rental unit by prohibiting any additional occupants, I find it necessary to clarify the provisions of the Act in this regard. Under section 30 (1) of the Act, a landlord must not unreasonably restrict access to residential property by (a) the tenant of a rental unit that is part of the residential property, or (b) a person permitted on the residential property by that tenant. (my emphasis)

Section 28 of the Act also protects a tenant's right to quiet enjoyment and states that a tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- (a) reasonable privacy;
- (b) freedom from unreasonable disturbance;
- (c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- (d) use of common areas for reasonable and lawful purposes, free from significant interference.

I find that, unless there is a specific term in the tenancy agreement that has been agreed to by both parties that restricts a the tenant from adding additional occupants or roommates and requiring that they be approved by the landlord or added to the tenancy agreement, a tenant would not be prohibited from adding an occupant as he chooses to do.

That being said, if a tenant has allowed an unreasonable number of occupants into the rental unit, this may be a basis for the landlord to issue a One-Month Notice to End Tenancy for Cause.

Based on the above evidence, I hereby cancel the undated One Month Notice to End Tenancy for Cause and I dismiss the remaining issues in the tenant's application with leave to reapply because no dispute that may be determined was disclosed in relation to these issues.

### **Conclusion**

The tenant is successful in the application. The One Month Notice to End Tenancy for Cause is cancelled, based on a deficiency in the Notice. The remaining issues in the tenant's application do not disclose any dispute that may be determined and these are dismissed with leave to reapply.

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 26, 2013

