



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ASSOCIATED PROPERTY MANAGEMENT (2001) LTD  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      OPC, CNC, FF, MNSD

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord applied for: an Order of Possession for cause; to keep all or part of the pet damage or security deposit; and to recover the filing fee from the tenant for the cost of this application. The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of this application.

At the start of the hearing the landlord withdrew the portion of the application to keep the security deposit and the tenant withdrew the portion of the application to recover the cost of the application from the landlord.

Both parties served each other with a copy of the application and Notice of Hearing documents and confirmed receipt of the documents. Based on this, I find that the service requirements under the *Residential Tenancy Act* have been met.

Both parties attended the hearing and gave affirmed testimony. The landlord and tenant were given the opportunity to cross examine each other on the evidence provided. **Both** parties had also submitted evidence on June 25, 2013. However, this was marked as late as it was not submitted to the Residential Tenancy Branch within the time frames explained in the documents received by both parties. Therefore, I have not considered it in this Decision. However, the evidence submitted **with** the application by both parties, along with all the affirmed testimony has been considered in this Decision.

### Issue(s) to be Decided

- Is the tenant entitled to cancel the 1 Month Notice to End Tenancy for Cause issued by the landlord?
- Is the landlord entitled to an Order of Possession?

### Background and Evidence

Both parties agreed that the tenancy started on December 1, 2012 for a fixed term of one year with the intention of going into a month-to-month period thereafter. The landlord collected a security deposit from the tenant on November 23, 2012 in the amount of \$650.00. A signed written tenancy agreement was completed and rent in the amount of \$1,300.00 is payable by the tenant on the first day of each month.

The landlord testified that on February 28, 2013 the rental unit was put up for sale. When the tenant was informed, he was not happy about this and expressed his anger towards this situation. The landlord testified that the tenant demanded monetary compensation in the form of a rent reduction.

On March 5, 2013 the landlord's witness, who was the selling realtor of the rental unit, testified that the tenant had engaged in a course of action that prevented the landlord from selling the property. This included the tenant following prospective buyers around the house and breathing on their necks during several viewings.

The landlord's witness testified that on May 1, 2013 the tenant was so angry that he stated he would kill him by breaking his jaws and snapping his neck. Later that day, the tenant sent the landlord a text message that was both slanderous and attempting to provoke a physical altercation. This was reported to the police and as a result, a police reference number was generated and provided as evidence. However, the landlord was unable to provide these text messages as evidence.

As a result, the landlord's witness testified that he was so scared of the tenant, or to be in the presence of the tenant, that he could no longer do viewings and feared for his and the prospective buyers' safety as the tenant had claimed he was well versed in martial arts.

The landlord testified that he received phone calls from the tenant's neighbours whom the tenant was good friends with, who told the landlord that they should be ashamed of themselves for putting the property up for sale and kicking the tenants out. The landlord testified that they had explained to the tenant that the fixed term tenancy of one year had to be legally honoured and that they were not going to be evicted.

As a result, the landlord issued the tenant with a 1 Month Notice to End Tenancy for Cause. The notice was served onto the tenant on May 24, 2013 by posting it to the door

with an expected date of vacancy of June 30, 2013. The notice to end tenancy, provided as evidence, listed two reasons for ending the tenancy, which were as follows:

- The tenant has engaged in illegal activity that has, or is likely to: adversely affect the quiet enjoyment, security and safety or physical wellbeing of another occupant or the landlord; and jeopardise a lawful right or interest of another occupant or the landlord.
- The tenant or person permitted in the property by the tenant has: significantly interfered with or unreasonably disturbed another occupant or the landlord; and seriously jeopardised the health or safety or lawful right of another occupant or the landlord.

The tenant testified that he had indeed threatened the landlord's witness but denied sending the landlord text messages or interfering with the viewings by breathing on prospective buyers' necks. He explained that he was frustrated with all the viewings that were taking place but that he and his family had gone out of their way to help facilitate the viewings. The tenant testified that the landlord had failed to: provide them with a clean rental unit; complete repairs to the rental unit; and give proper notice for the viewings that were taking place.

### Analysis

I find that the 1 Month Notice to End Tenancy for Cause was issued to the tenant by the landlord in the correct form and contained the correct content as required by the *Residential Tenancy Act*.

In my analysis of the notice to end tenancy, there is sufficient evidence to support a case that the tenant has seriously jeopardised the safety and lawful right of the landlord. This is based on the verbal testimony of the landlord and the landlord's witness who testified that the threats had been made and that this had been reported to the police.

The tenant attempted to provide reasoning to explain his behavior stating that the landlord had failed to clean the unit and do repairs. However, the tenant did not make any attempt to address these issues with the landlord in writing or by making an application for dispute resolution to resolve these issues. Furthermore, I find these are not reasons sufficient to explain or related to the tenant's behaviour towards the landlord.

A landlord has the right to put their property on the buying market at any time. If the tenant and the landlord are in a fixed term tenancy, the landlord is required to honor the

tenancy until the fixed term, agreed by the tenant, lapses. If the tenancy is a month-to-month tenancy, then the landlord is required to give the tenant compensation for having to leave the tenancy when the property sells. In this case the landlord had the right to put the property for sale. If the property sold, the new buyer would have had to honour the fixed term tenancy and this would not have affected the tenant's right to rent the unit until the fixed term had lapsed.

Whilst the tenant testified that he had not interfered with the landlord in the manner that was testified, he did acknowledge that he was angry at the situation with the property being for sale and that he did make verbal threats. Based on this, I find that the landlord was justified in issuing the tenant with the notice to end tenancy and therefore, I am unable to cancel the notice to end tenancy. As a result, the landlord is granted an Order of Possession. As the effective date on the notice to end tenancy has passed, the Order of Possession will be effective 2 days after it is served onto the tenant.

### Conclusion

For the reasons set out above, I find the landlord is entitled to an Order of Possession effective **2 days after service on the tenant**.

I also grant the landlord a monetary order in the amount of \$50.00 for the cost of this application.

The tenant's application is dismissed without leave to re-apply.

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: July 02, 2013

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Residential Tenancy Branch