



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 525 10TH STREET LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause rent and to recover the filing fee for this proceeding.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on March 10, 2014. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenants' hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

At the start of the conference call the Landlord was told the evidence and request to amend the 1 Month Notice to End Tenancy that the Landlord submitted on March 14, 2014 is considered to be late evidence and is not admissible to the hearing. Evidence must be submitted at least 5 working days prior to the hearing so that the other party has time to respond to it. The Landlord's late evidence is dismissed from the hearing.

### Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the 1 Month Notice to End Tenancy?

### Background and Evidence

This tenancy started on August 1, 2013 fixed term tenancy with an expiry date of August 1, 2014. Rent is \$850.00 per month payable on the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$425.00 and a pet deposit of \$425.00 on July 29, 2013.

The Landlord said he served the Tenant with a 10 Day Notice to End Tenancy for Cause as a result of unpaid utilities and because the Tenant has had some aggressive conversations with the Landlord's staff. The Landlord said the 1 Month Notice to End Tenancy dated March 6, 2014 was served to the Tenant on March 6, 2014 by posting it on the door of the Tenant's rental unit. The reasons on the Notice to End Tenancy are; significantly interfere with or unreasonably disturb the landlord or other occupants, put

the Landlord's property at significant risk and breaching a material term of the tenancy agreement. The Landlord said he wants to end the tenancy.

The Landlord continued to say that the Tenant has not threatened any of the staff nor are the staff afraid of the Tenant, but the Tenant had some sharp discussion with the staff which the Landlord does not appreciate. As well the Tenant has been late on 3 rent payments due to NSF payments by the Tenant. In addition the Landlord is concerned that the Tenant may damage the unit as a result of being served a Notice to End Tenancy. The Landlord continued to say that the Tenant has also breach the tenancy agreement because he did not transfer the electrical utilities into his name and the city wrote the Landlord that the utilities must be paid or the electricity would be cut off. The Landlord said he did not believe any damage would happen to the unit if the electricity was cut off, but the Landlord said it is a breach of the tenancy agreement as electricity is not included in the tenancy agreement. The Landlord said for these reasons he issued the 1 Month Notice to End Tenancy for Cause and he wants to end the tenancy.

The Tenant said he thought the Landlord could transfer the utilities into his name, but he was told in mid August, 2013 that he had to do this in person. The Tenant said he transferred the utilities into his name in October, 2013. As a result of the late transfer the Landlord was sent a notice from the City that the utilities were not paid and the Landlord paid the utilities and then charged the Tenant for the utilities from August to October, 2013. The Tenant said he paid the Landlord in October for the over due Utilities. The Tenant continued to say that he also transferred the utility account to his name in October, 2014 and was told that the billing period was 48 to 52 days so he should wait until the next bill to pay the arrears and the current amount. The Tenant said he received the utility bill in February, 2014 indicted payment was due by March 11, 2014 and he paid the full account of \$230.90 on March 7, 2014. The Tenant said he has corrected the utility issues as soon as he knew about them.

The Tenant continued to say that he has had some discussion with the Landlord's staff in which both sides were a bit emotional and he apologized to the Landlord for his part in those discussions. The Tenant told the Landlord he would be respectful and professional with the Landlord's staff in the future.

With respect to putting the Landlord's property at risk both parties agreed no damage has been done by the Tenant to date.

The Parties were offered an opportunity to settle this dispute and the Tenant said he wants to continue the tenancy. To do so the Tenant said he has put overdraft protection on his bank account so that the rent will be paid, he apologised for any of his outbursts and he said he will be respectful and professional in his dealing with the Landlord and his staff. As well the Tenant said the utility payment issues are resolved.

The Landlord said because of the history in this tenancy he does not want to continue the tenancy.

The Tenant said in closing that he wants to continue the tenancy and he has and will make adjustments to make the tenancy run smoother.

The Landlord said in closing that the Tenant has not treated his staff well, he has been late on three rent payments and he has breached a material term of the tenancy agreement so the Landlord said he would like to end the tenancy as per the 1 Month Notice to End Tenancy for Cause dated March 6, 2014.

### Analysis

#### **Landlord's notice: for cause**

**Section 47 of the Act says** (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

I accept that not paying the Utilities when the Utilities are not included in the tenancy agreement is a material breach of a tenancy agreement. As well the Act states that the Tenant can correct the situation in a reasonable time period. The Tenant said that when he was made aware of the issue with the utilities in October, 2013 he paid the Landlord for the utilities and he put his name on the Utility account. In March the Tenant said he paid the Utility account on March 7, 2014 which was prior to the payment due date of March 11, 2014. Consequently although the Tenant has not handled the Utility account as the Landlord has requested the Tenant has corrected the situation when told about the problems. Therefore I find the Tenant has corrected the breach of a material term of the tenancy agreement in a reasonable amount of time and I dismiss the breach of a material term of the tenancy agreement as a reason for the Notice to End Tenancy for Cause.

Further it is apparent from the testimony and evidence that there are some issues between the Tenant and the Landlord and his staff. The Tenant has said he is going to be professional and respectful if the tenancy continues and the Landlord said he is

sceptical give the history of the tenancy. Consequently the parties will abide by the following decision. In Section 47 (d) of the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because another occupant has been disturbed or interfered with, they must have been **unreasonably** disturbed, or **seriously** interfered with. Similarly the landlord must show that a tenant has put the landlord's property at **significant** risk.

In this case it is my finding that the reasons given for ending the tenancy have not reached the level of **unreasonableness, significance or seriousness** required by section 47(d) of the Residential Tenancy Act. I find in favour of the Tenant and Order the 1 Month Notice to End Tenancy for Cause date March 6, 2014 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement dated July 30, 2013.

As the Tenant has been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding by deducting it from the April, 2014 rent. The April, 2014 rent is adjusted to \$800.00.

### Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated March 6, 2014 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

The April, 2014 rent payment is adjusted to \$800.00 so that the Tenant can recover the filing fee of \$50.00 for this proceeding from the Landlord.

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: March 18, 2014

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Residential Tenancy Branch

