



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with a tenant's application 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

I noted the tenant's name as it appears on the tenant's Application for Dispute Resolution and on the Notice to End Tenancy were not the same. The tenant also stated that his legal name is different than the name he provided on his Application for Dispute Resolution. The landlord also submitted that the tenant's name, as it appears on the tenancy application and rent payments is different than the names he has put forth. The tenant had no objection to amending the Application for Dispute Resolution to reflect the various his various names.

The tenant raised an issue with respect to service of the landlord's evidence upon him. The tenant submitted that the landlord did not serve him with the landlord's at least five days before the hearing date and that it was served upon him only four days before the hearing. The landlord submitted that the evidence was served to the tenant five days before the hearing. Both parties agreed that there was a witness, another occupant of the residential property, who observed service of the landlord's evidence upon the tenant. The witness called to testify as to service. The tenant physically approached the witness during the teleconference call and requested his testimony. The tenant stood next to the witness during the witness's testimony. The witness initially indicated that he supported the landlord's submissions with respect to service. The tenant proceeded to badger the witness to change his testimony. The witness ultimately changed his testimony to indicate he could not recall with accuracy as to the date of service.

The tenant confirmed that he had read the landlord's written submission and indicated he was prepared to respond to the content of the landlord's evidence. I enquired with the tenant as to the nature of evidence he would gather submit if he had more time to review and respond to the landlord's evidence. The tenant stated that he did not have any evidence to gather and submit in support of his position. Given these circumstances, I found the tenant was not prejudiced if he had in fact received the landlord's evidence one day late and I included the landlord's evidence.

On a procedural note, I had to caution the tenant near the start of the hearing about appropriate conduct during a dispute resolution procedure including being argumentative and trying to talk over me.

I also noted that the tenant did not serve the Branch or the landlord with a copy of the Notice to End Tenancy he wished to dispute. Rather than dismiss the tenant's application on the basis alone, I confirmed with both parties the content of the subject Notice and have made this decision based upon the merits of the dispute.

The landlord orally requested an Order of Possession during the hearing.

#### Issue(s) to be Decided

1. Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?
2. Is the landlord entitled to an Order of Possession?

#### Background and Evidence

The tenancy commenced in February 2013 and the tenant is required to pay rent of \$400.00 on the 1<sup>st</sup> day of every month. The rental unit is a room in a rooming house and the tenant has shared use of kitchen and bathroom facilities with other tenants and a resident caretaker.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause on January 30, 2014 (the Notice). The Notice indicates two reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenants has seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and,

- Tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord explained that the tenant is the most recent tenant to move into the property and that most other tenants have been at the property for several years in harmony until the tenant moved in. Despite several verbal warnings, the tenant's behaviour has continued to be disturbing to the other occupants and has put the property at risk.

The landlord submitted that the tenant's behaviour while at the property is violent and threatening toward other tenants and the caretaker; that the tenant and his guests unreasonably disturb other tenants; and, the tenant's conduct has put other occupants and the property at risk of fire.

The landlord provided the following specific examples as to disturbing conduct:

1. The tenant kicked in the door of the resident caretaker in October 2013;
2. The tenant threatened another tenant (the witness) with a fork;
3. The tenant has a female guest who frequently disturbs other occupants with her drunken yelling and screaming;
4. The tenant harasses the resident caretaker by calling him a "just a faggot little janitor";
5. When the tenant is drunk he leaves urine all over the toilet seat and floor of the common bathroom;
6. Cigarettes are carelessly disposed of by throwing them out the window, and all four of the tenant's stove elements have been left on several times since he moved in, creating a fire hazard;
7. Food belonging to other tenants has gone missing and in an attempt to reduce theft of food the caretaker placed labels on the cupboard doors which the tenant ripped off; and,
8. After becoming angry, the tenant told the caretaker he was going "to give you and everyone here a gift" which the caretaker as a threat and reported it to the police.

In support of the landlord's submissions, the landlord provided a document signed by all of the current tenants and the resident manager. The document describes the same type of disturbing behaviour outlined above and refers to living in fear of their physical safety and dangerous living environment due to the tenant's erratic behaviour.

The tenant objected to the inclusion of the above-described document on the basis it does not conform to “Rules of Evidence” since the signatures of the persons that signed it were obscured on his copy of the document.

The landlord acknowledged the signature section of the document given to the tenant was obscured so as to not reveal personal information that appears with the signatures. I informed the tenant that the copy of the document provided to me includes signatures of all tenants, except the one that has since moved out, and that most of the signatories had included their telephone number and years of residency alongside their signature.

The tenant responded to the specific examples provided by the landlord by denying responsibility for most of the conduct described to me. The tenant acknowledged ripping the labels off the cupboard door since he felt he did not need a label to identify his cupboard. The tenant also wished to clarify that before the caretaker undertook duties as the caretaker he was the janitor and a tenant at the property.

The tenant pointed out that the police had not attended the property to deal with any complaint made against him.

The tenant also pointed out that the landlord has offered the tenant compensation to move out of the rental unit prior to issuing the eviction notice. The landlord agreed that compensation was offered in an effort to work with the tenant in a mutually agreeable manner.

The tenant offered a theory as to the reason the landlord wishes to end his tenancy, as follows. In October 2013 the tenant advised the landlord’s construction workers that they were improperly making alterations to the property; the tenant had also objected to moving items stored in an area the construction workers wished to access; and, the tenant reported the construction activities to the City, which inspected the property. The tenant then changed his testimony to say the conflict with the construction workers and the owner started in August or September 2013.

### Analysis

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Upon careful consideration of everything presented to me, I provide the following findings and reasons.

Under the Act, every tenant has a lawful right to be entitled to quiet enjoyment of their rental unit and residential property. The landlord has a duty to protect that right where that right has been breached by another tenant. In other words, where one tenant suffers a breach of quiet enjoyment due to the actions of another tenant, the landlord is expected to take action against the offending tenant.

Most of the landlord's submissions were denied by the tenant; however, I found the testimony of the caretaker to be credible, detailed, and consistent with written document signed by all of the current tenants of the property. I have also considered the badgering and aggressive behaviour the tenant exhibited toward the witness and me during the hearing in finding it more likely than not that the tenant does harass and unreasonably disturb the other tenants and the caretaker.

I have accepted and considered the document signed by all of the current tenants in making this decision despite the tenant's objections for the following reasons. It is important to note that the Rules of Procedure provide the rules for the dispute resolution proceeding and the Rules of Procedure permit an Arbitrator to authorize a party to sever "personal information" from evidence. Personal information is defined in the Rules of Procedure and includes a person's, name, address or telephone number or other identifying information. Further, section 75 of the Act provides that an Arbitrator may accept evidence that would not otherwise comply with Rules of Evidence so long as the Arbitrator considers the evidence necessary, appropriate and relevant to the dispute. Considering I heard the tenant has harassed and intimidated other tenants and the caretaker, and I observed during the hearing, I find it appropriate the landlord severed the personal information from the tenant's copy of the document.

In light of the above, I find the landlord has satisfied me that the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, as indicated on the Notice to End Tenancy. Therefore, I uphold the Notice to End Tenancy based upon this reason and I dismiss the tenant's application for cancellation of the Notice.

With respect to the landlord's oral request for an Order of Possession, section 55 of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

I find the above criteria have been met and I grant the landlord's request for an Order of Possession. Provided to the landlord with this decision is an Order of Possession effective two (2) days after service upon the tenant.

### Conclusion

The Notice to End Tenancy has been upheld and the tenant's application dismissed. I have granted the landlord's request for an Order of Possession under section 55 of the Act. The Order of Possession shall be effective two (2) days after service upon the tenant.

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: April 04, 2014

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Residential Tenancy Branch

