



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding G & M Totos Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that the landlord handed him the 1 Month Notice on June 14, 2014. The landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing package on June 22, 2014. I am satisfied that both parties served one another with the above documents in accordance with the *Act*. As the landlord confirmed that he received the attachments provided by the tenant with his application for dispute resolution, comprising a copy of the 1 Month Notice, I am also satisfied that the tenant served the landlord with a copy of his written evidence.

Although the landlord submitted written and photographic evidence to the Residential Tenancy Branch (the RTB), the landlord testified that he did not send copies of this evidence to the tenant. At the hearing, I advised the parties that I could not consider any of the landlord's written or photographic evidence, as I can only consider evidence a party provides to the other party in a dispute. To consider such evidence would constitute a denial of the tenant's right to know the case against him as established by the principles of natural justice.

At the hearing, the landlord made an oral request for the issuance of an Order of Possession in the event that the tenant's application to cancel the 1 Month Notice were dismissed.

### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Background and Evidence

This periodic tenancy began on September 1, 2013. Monthly rent is set at \$700.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$350.00 security deposit. Although the landlord referred to a written Residential Tenancy Agreement (the Agreement) between the parties, the landlord has not entered into written evidence a copy of that Agreement which I can consider in my decision making.

The parties agreed that the landlord has accepted the tenant's August 2014 rent payment, which has the effect of continuing this tenancy after the July 31, 2014 effective date of the landlord's 1 Month Notice.

The tenant entered into written evidence a copy of the 1 Month Notice. In that Notice, the landlord cited the following reason for the issuance of the Notice:

*Tenant has caused extraordinary damage to the unit/site or property/park.*

At the hearing, the landlord described the circumstances surrounding the lengthy process that the tenant has taken to repair a truck that he has placed on the rental unit. The landlord testified that this truck has been sitting on blocks for many months in a covered parking spot that is very close to another of the four rental units in this rental property. However, the landlord did not dispute the tenant's sworn testimony that his monthly rent includes this parking space, where he has left this truck. The landlord complained about the safety of leaving this truck on site for many months in a state of disrepair. He testified that tires, oil, portable gas containers, and many truck parts have been strewn across the premises. He maintained that the tenant is responsible for the spilling of oil on the driveway and that the repair process has caused health and safety concerns for other tenants at this property. He said that he has discussed his concerns with the tenant many times without results. He stated that the rented parking space was not a suitable location to undertake major repairs to the tenant's vehicle and was contrary to the terms of the Agreement.

The tenant testified that he purchased an older truck about a year and a half ago, which he realized needed repairs. He said that he purchased insurance for theft/glass damage and storage after he obtained the truck, coverage which he still retains. He said that he and his friends have been repairing the truck. He testified that the truck has not moved from his assigned covered parking space for the past six or seven months. He said from time to time he had run extension cords to a power source to undertake repairs to his truck and at one time had some gas cans and oil on the rental property. He said that he currently had no oil stored around the truck and the only liquids he had in this vicinity were some cleaning fluids.

The tenant testified that he has a disability and underwent neck surgery three weeks ago. He said that he has been unable to perform even basic tasks as he recovers from that surgery. He said that he received the remainder of the parts he needed to repair his vehicle shortly before this hearing. He gave sworn testimony that he would be able to have the repairs to his truck completed by the end of August 2014, by which time he could also have all of the parts and equipment associated with the repairs removed from the vicinity of his rented parking space.

### Analysis

Section 47(1)(f) of the *Act* allows a landlord to end a tenancy for cause if “the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property.” When a landlord issues a notice to end tenancy and the tenant disputes the notice the onus is on the landlord to prove cause for issuing the notice.

The landlord gave sworn oral testimony that the activities being undertaken by the tenant contravened the terms of their signed Agreement causing extraordinary damage to this rental property. However, the landlord has provided no photographic or written evidence that I can consider to support his contention because he has not served his evidence to the tenant. Without a copy of the Agreement before me, any photographs to demonstrate the extent of the damage and without any corroborating sworn testimony or written statements from anyone else, the landlord’s reasons for seeking an end to this tenancy rest solely on his sworn testimony, disputed at the hearing by the tenant.

Other than the landlord’s claim that oil allegedly left in the vicinity of the tenant’s truck was spilled and had to be removed and cleaned by the landlord, the landlord has not made claims that the tenant’s actions have caused extraordinary damage to the rental property. Rather, I find that much of the landlord’s sworn testimony was directed at the potential safety concerns raised by the lengthy repair process on the tenant’s truck. While the landlord may very well have valid concerns about safety and about the disruption and disturbance created by the tenant’s actions in repairing his truck, these were not cited as reasons for ending this tenancy for cause in the landlord’s 1 Month Notice. The sole reason that I can consider for ending this tenancy is the landlord’s claim that the tenant had caused extraordinary damage to the rental property.

In considering the landlord’s claim regarding extraordinary damage, I note that the tenant testified that any oil that may have been spilled was not his responsibility. He also claimed that the spilled oil was not his as he had already removed oil he left on the property by the time this occurred. He also maintained that some unknown person spilled the oil in question. Even if the spilled oil were the tenant’s responsibility, a

conclusion that is unclear and disputed by the parties, I find that this single incident of spilled oil as described by the landlord, does not qualify as extraordinary damage sufficient to end this tenancy for cause. In general, I find that the landlord has provided little evidence to support the reason cited in his 1 Month Notice for ending this tenancy for cause.

I also note that the landlord has accepted rent from the tenant for the month of August, after the landlord's 1 Month Notice was to have taken effect. This acceptance of the tenant's rent for August 2014 alone may have reinstated this tenancy and set aside the landlord's 1 Month Notice.

For the reasons cited above, I allow the tenant's application to cancel the 1 Month Notice as I find that the landlord has provided insufficient evidence to allow me to make a finding that the tenant is responsible for extraordinary damage to the rental property to the extent that this tenancy should be ended for cause. By allowing the tenant's application, I find that the 1 Month Notice is no longer in force or effect.

In accordance with the powers delegated to me under the *Act* to make orders to assist in this ongoing tenancy, I have also taken into account the tenant's undisputed sworn testimony that he now has all of the parts required to complete the repairs to his truck by the end of August 2014. By the tenant's own admission, he has been working on the repairs to this truck for the past six or seven months. I accept that the landlord has legitimate concerns about this ongoing activity, even though the landlord has not pursued these concerns in a way that enables him to obtain the Order of Possession he is seeking.

In order to assist the parties with this tenancy, I order that the tenant discontinue making repairs to his truck at this rental property by August 30, 2014. In the event that the repairs to the tenant's truck have not been completed by that date, I order the tenant to remove the truck from this property to some other location where the necessary repairs can be completed. Should this action become necessary, the tenant may return his truck to his rented parking space once the repairs have been completed and the truck can be driven to the rental property. I issue these orders to the tenant as I find that this major repair process has taken far too long and extends beyond the type of repairs that would normally be considered acceptable in a parking space in a shared rental property. Should the tenant fail to comply with these orders, the landlord is at liberty to issue a new notice to end this tenancy and to apply for dispute resolution to obtain compliance with my orders as outlined above.

Conclusion

The tenant's application is allowed. The 1 Month Notice is set aside with the effect that this tenancy shall continue.

I order the tenant to discontinue making repairs to his truck at this rental property by August 30, 2014. In the event that the repairs to the tenant's truck have not been completed by that date, I order the tenant to remove the truck from this property to some other location where the necessary repairs can be completed. Should this action become necessary, the tenant may return his truck to his rented parking space once the repairs have been completed and the truck can be driven to the rental property.

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: August 15, 2014

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Residential Tenancy Branch

