



# 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 an Application for Dispute Resolution by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the “notice”) issued on July 17, 2014.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the notice to end tenancy issued on July 17, 2014, be cancelled?

### Background and Evidence

The parties agree that a one month notice to end tenancy for cause was served on the tenant indicating that the tenant is required to vacate the rental unit on August 21, 2013.

The reason stated in the notice to end tenancy was that the tenant has:

- Put the landlord's property at significant risk.

The landlord's agent testified that in May 2014, they discovered that they did not have a key to the tenant's rental when they were investigating a plumbing leaking that was going into the rental unit directly below the tenants. The agents stated that the tenant did not have permission of the landlord to change the locks and they have asked the tenant to provide a key on several occasions. The agent stated that the tenant has put

the property at significant risk as they are unable to attend his rental unit without a key should an emergency occur.

The tenant testified that the agents are mistaken when the tenancy commenced as they indicated in their written submission that the tenancy started in October 1, 2013. The tenant stated he has been a tenant for more than seven years and when the tenancy commenced the lock was broken, and he had permission of the landlord to repair the lock and at that time a key and a receipt for the repair were provided to the landlord.

The tenant testified that the agents for the landlord have asked him to provide a key and to leave the key with another tenant, which he was not willing to do. The tenant stated it was not in May 2014, when the landlord asked for a key it was on July 10, 2014, and again on July 12, 2014, by email which those emails were not opened at the time as he did not recognize the email address.

The tenant testified that he was then served with a notice to end tenancy for cause issued on July 17, 2014. The tenant stated he has not provided a key to the landlord as he was waiting for the hearing. The tenant stated he has not put the landlord's property at any risk as he has always allowed access to the unit, when he has been given proper notice.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- Put the landlord's property at significant risk.

In this case, the evidence of the landlord's agents was that the tenant has put the landlord's property at significant risk because the tenant changed the locks without the landlord's consent and has refused to provide a copy of the key to the landlord and in an event of an emergency has put the landlord's property at significant risk.

The evidence of the landlord was that they discovered they did not have a key in May 2014. The evidence of the tenant was it was not in May 2014 when the landlord agent requested a copy of the key, it was on July 10, 2014. Filed in the landlord evidence is an email dated July 10, 2014, which supports the tenant's position. Under section 88 of the Act service of general documents, email is not an approved method of service.

In this case, the notice to end tenancy was issued on July 17, 2014, two months after the landlord was aware that they did not have a key to the rental unit. If the landlord felt by

not having a key placed their property at significant risk, it would have been reasonable at that time to issue the notice to end tenancy, rather than to wait two months later.

Further, there was no evidence that the tenant has placed the landlord's property at significant risk, as the landlord has had access to the rental unit, when the tenant has received proper notice under the Act. I find the notice issued on July 17, 2014, is not a valid notice. Therefore, I grant the tenant's application and cancel the notice, issued on July 17, 2014. The tenancy will continue until legally ended in accordance with the Act.

Under section 31 of the Act the tenant cannot change the locks without permission of the landlord. In this case, the evidence of the tenant was that he had permission to change the lock when the tenancy started, seven years prior and a key and a receipt was provided to the landlord.

Even if I accept the testimony of the tenant that a key was provided seven years prior, the landlord no longer has a key to the rental unit and is entitled to receive a copy of the only existing key from the tenant. Under section 29 of the Act, the landlord has the right to enter the rental unit with or without the tenant being present.

During the hearing, I made the ordered that the tenant must provide a copy of the key to the landlord's caretaker immediately after the hearing, September 23, 2014 and the landlord's caretaker will confirm that the key works on the tenant's rental unit.

The tenant is caution that under Section 31(2) of the Act, the tenant must not change the locks unless the landlord gives written permission. Should the locks be change at any future date by the tenant without the written consent of the landlord, the landlord may issue a new notice to end the tenancy. A copy of this decision may be produced in evidence in any further hearing should the locks be changed without written consent of 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: September 26, 2014

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Residential Tenancy Branch

