



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, MNDC, FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling the landlord's 1 Month Notice to End Tenancy for Cause (the "Notice"), for an order requiring the landlord to comply with the Act, for a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee paid for this application.

The tenant, the landlord, and the landlord's witness/agent attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

Thereafter all parties were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, respond each to the other, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

*Preliminary matter-*At the outset of the hearing, the evidence was discussed, and the landlord confirmed receiving the tenant's application and attached evidence. No mention was made of additional documentary evidence, until later in the hearing, at which time the tenant stated she faxed additional evidence to the Residential Tenancy Branch ("RTB") and the landlord, which the landlord confirmed receiving. Over the objection of the landlord, I allowed the tenant to resubmit this documentary evidence.

The tenant did transmit the evidence, but upon review, I found the evidence not relevant or helpful, as the documents were handwritten statements of the tenant, much of which

was covered in the hearing. The additional documentary evidence was not considered when making this Decision.

The landlord confirmed they did not file documentary evidence.

*Preliminary matter#2-* I have determined that the portion of the tenant's application dealing with a request for orders for the landlord's compliance with the Act and for monetary compensation are unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Residential Tenancy Branch Rules of Procedure, I have severed the tenant's Application and dismissed that portion of the tenant's request for those orders, **with leave to reapply**.

The hearing proceeded only upon the tenant's application to cancel a Notice to End Tenancy for Cause.

#### Issue(s) to be Decided

Has the tenant established an entitlement to have the Notice to End Tenancy for Cause cancelled?

#### Background and Evidence

The undisputed evidence shows that this tenancy commenced on June 12, 2009, current monthly rent is \$817, and the tenant paid a security deposit of \$400.

These parties were recently in dispute resolution on the tenant's application seeking cancellation of another 1 Month Notice for alleged cause, issued on May 20, 2014. That hearing took place on July 16, 2014, and another Arbitrator cancelled the May 20 Notice, while indicating that the landlord had "checked off the wrong box" on the Notice. The other Arbitrator also found that the landlord did not prove the cause or causes listed on the May 20 Notice.

As the landlords were informed, and pursuant to the Rules, the landlords proceeded first in the hearing to explain and support their Notice.

In this case, the landlord listed as cause to end the tenancy that the tenant had seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The landlords explained that as their first Notice failed as they had listed an incorrect cause, they issued the tenant another Notice shortly after the hearing on July 16, 2014, listing another cause.

The Notice was dated July 21, 2014.

The landlord submitted that after the landlord's witness/agent, KG, took over management of the residential property, a multi-unit complex, KG sent an introduction letter to all the tenants on February 21, 2014. The letter informed the tenants that KG wanted to have a quick inspection of the premises.

On April 23, 2014, according to the landlords, another letter was issued, giving the tenant a window of time for KG to have an inspection. The landlords submitted further that another letter was placed in the tenant's mailbox, on May 4, for an inspection on May 9, 2014. That inspection did not take place. The landlords submitted further that on May 12, another letter was delivered to the tenant's mailbox, and a partial inspection took place on May 15, 2014. According to KG, the tenant prevented a full inspection, which led to the Notice of May 20, 2014, being issued to the tenant.

KG submitted that the tenant threatened to call the police.

The landlord confirmed that they have not attempted another inspection since May 15, 2014.

*Tenant's response-*

The tenant submitted that she was not sure who KG was as a result of the February 21, 2014, letter, as she had dealt only with the owners. The tenant submitted further that the first notice of inspection was received on April 28, 2014, and as she had heard from other tenants that their inspections did not go well, she contacted the Residential Tenancy Branch ("RTB") as to the legality of an inspection, as one had taken place at the beginning of the tenancy, and as she believed the landlord wanted her to sign a new tenancy agreement. The tenant submitted that no specific time was listed for an inspection.

The tenant submitted further that she had attempted to communicate with the landlord, RP, about some of the demands of KG, but that he refused.

The tenant submitted further that an inspection was set up on May 9, but as RP was not present, the inspection did not take place. The tenant submitted further that she

inquired of the RTB as to whether she should allow KG to inspect, and was informed that the landlord was permitted to have an agent for management of the property.

The tenant submitted further that on May 15, 2014, KG attended the rental unit and performed a full inspection. According to the tenant, KG asked if there were any problems, was told of a screen door issue, KG went upstairs, and then left, saying everything was fine. Shortly thereafter, she received the May 20 Notice.

*Landlord's rebuttal-*

KG denied having the opportunity to complete the inspection and that she did not want to discuss unpleasant in front of the tenant's child.

Analysis

In this case, the onus was on the landlord to prove that they had cause to end this tenancy, as listed on their Notice issued pursuant to section 47 of the Act.

In considering the landlord's evidence in support of their Notice, the landlord's claim is that the tenant refused the landlord an opportunity to complete an inspection of the rental unit. This led to the landlord issuing a Notice, on May 20, 2014, which was subsequently cancelled by another Arbitrator. As the first Notice failed, the landlord issued another Notice shortly after the first hearing, while confirming that they have not attempted any further inspections since the first Notice was issued. I therefore find the landlord submitted insufficient evidence to support this Notice, as there have been no further incidents since the first Notice was issued. I do not find a landlord is entitled to keep issuing Notices when one Notice fails or is cancelled.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated July 21, 2014, is not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

I allow the tenant recovery of her filing fee of \$50, and direct them to deduct this amount from their next or a future month's rent payment in satisfaction of their monetary award.

The parties are reminded of section 29 of the Act, which states a landlord may not enter a tenant's rental unit without giving a proper written notice of entry to do so. Among other requirements, section 29(1)(b)(ii) of the Act the notice of entry must contain the purpose for entering, which must be reasonable, and provide a specific time and date.

For the purpose of the Act, this does not mean a range of dates or times. The landlord should be mindful of section 90 of the Act, which states that documents delivered to a mailbox are not deemed delivered until three days later. The tenant is reminded, as she said she was now aware, that she may not prevent the landlord's or agent's entry to the rental unit for a legitimate purpose, if properly notified, and that a landlord is entitled to perform a monthly inspection of the rental unit.

### Conclusion

I grant the tenant's application seeking cancellation of the landlord's 1 Month Notice and the Notice is hereby cancelled and set aside, with the effect that the tenancy will continue until ended in accordance with the *Act*.

The tenant is directed to deduct \$50 from the next or a future month's rent payment to satisfy her monetary award of \$50. The tenant should inform the landlord when she is making this deduction.

The portion of the tenant's application dealing with a request for the landlord's compliance and monetary compensation was severed, and dismissed with leave to reapply.

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: October 6, 2014

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Residential Tenancy Branch

