



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with an application by the tenant for an order setting aside a 1 Month Notice to End Tenancy for Cause. Both parties appeared and had an opportunity to be heard.

Both parties filed a few pages of late evidence. The tenant's evidence was basically a submission of fact and argument. The tenant gave the same information in the course of his oral testimony.

The landlord's evidence was some newspaper clippings from 2008 and 2009 about criminal charges laid against two individuals with the same names as the tenants. The landlord had not served this evidence on the tenants in advance of the hearing so I did not accept it as evidence for this hearing. However, it is important for the parties to understand that even if I had accepted this evidence it would have been of very limited evidentiary value. Evidence of criminal activity, past or present, is only relevant if it directly impacts the current tenancy.

### Issue(s) to be Decided

Is the 1 Month Notice to End Tenancy valid?

### Background and Evidence

This one year fixed term tenancy commenced February 1, 2014. The monthly rent of \$1800.00 is due on the first day of the month.

The rental unit is a portion of a large home. One of the issues between the parties is what portion? On the upper level is the main living area. The landlord testified that there are four bedrooms on the upper level. On the lower level there is a two bedroom suite that is quite separate. This unit is not part of the dispute between the parties. There is also a one bedroom suite. This unit has a separate outside entrance but can

also be accessed from the main area of the house. Also on the lower level is room the landlord described as an entertainment room with a bathroom.

The landlord testified that they advertised only the upper level of the house as being for rent. When he showed the home to the tenant he only showed the upper level, the entertainment room, and the garage. He says they did not look at the two suites or talk about them.

The tenant testified that the ad was for the whole house. He said that when he looked at the house he did walk into the one bedroom suite, as it was just through a door from the rest of the house. The tenant testified about the size of his extended family and stated that the only way they would all fit in this house was if they also had the use of the one bedroom suite. Having this extra space was the reason why he agreed to rent the property.

When the tenant looked at the rental unit and when the parties signed the tenancy agreement the one bedroom suite was occupied by a tenant named Mike. The landlord had served Mike with a 1 Month Notice to End Tenancy for Cause on August 5, 2014.

The landlord testified that although Mike was supposed to move out September 5, 2014, he allowed Mike to stay until he could find another place. He told Mike that if he did not behave he was authorizing the tenant to ask him to leave. The landlord confirmed in his testimony that he authorized the tenant to remove Mike. The landlord testified that Mike found a new place and moved out voluntarily on September 20.

The tenant's version of events is that the landlord was adamant that Mike be evicted and he asked the tenant to do that for him. The tenant described himself as 6'6" tall and 340 pounds and said he can be quite intimidating. However, he felt sorry for Mike so he gave him \$250.00 and arranged to have a friend with a truck move him out.

The tenant immediately started cleaning the one bedroom suite. Not only did he clean it but he repaired the drywall, applied two coats of a product called Kilz, and painted.

The landlord came to the unit on September 21 and saw that the tenant had started work. When he came back on September 24 he realized that the kitchen had been cleaned and most of the walls painted. Later that day he thanked the tenant doing the work and gave him \$100.00 as a thank you.

The landlord testified that he intended to use the one bedroom suite for himself so sometime between September 24 and October 3 he put some personal belongings in the suite.

The tenant testified that when he saw that the landlord had put some personal items – but not any furniture – in the one bedroom suite he was not very happy. He put the landlord's items in the garage, locked the suite door, and called the landlord. The landlord said he was moving his family into the suite.

The landlord testified that when he went to the house on October 3 he found that the lock had been changed and his belongings put in the garage. The tenant said the landlord came with four members of his family. The landlord called the police, who attended and told the parties to take the issue to the Residential Tenancy Branch.

The landlord said his friend spoke to a young man who is residing in the one bedroom suite, who told his friend that he was renting from the tenant. There was no direct evidence from the friend. The tenant testified that the young man is his godson who is going through a difficult personal time. He testified that the young man is not paying any rent; only staying with him as part of his family.

On October 7 the landlord served the tenant with a 1 Month Notice to End Tenancy for Cause. A copy of the notice was not filed in evidence.

On the issue of what portion of the house is covered by this tenancy agreement the landlord filed several documents:

- A copy of a Craig's List ad. The ad is for a four bedroom four bathroom house. It also says "3 br upstairs with furniture". The tenant says the ad is not the original ad but was recreated for the purposes of this hearing.
- Copies of the first pages of the tenancy agreements with the tenants, Mike, and the residents of the two bedroom suite. In every tenancy agreement the rental unit is described by the same civic address; no other description.
- Receipt for the keys given to the tenants at the start of the tenancy. The landlord points out that a key for the one bedroom suite is not included.

### Analysis

On every application such as this the onus is on the landlord to prove, on a balance of probabilities, that:

- the tenant was served with a valid notice to end tenancy; and,
- the reasons stated on the notice for ending the tenancy exist.

In this case the landlord did not file a copy of the 1 Month Notice to End Tenancy for Cause served on the tenants; only a copy of the 1 Month Notice to End Tenancy for Cause served on Mike. The landlord has not met the first element of his evidentiary burden and accordingly, the tenants' application must be granted. The tenancy continues until ended in accordance with the legislation.

As the tenants were successful on their application they are entitled to reimbursement from the landlord of the fee they paid to file this application. Pursuant to section 72 this amount may be deducted from the next rent payment due to the landlord.

Although this decision determines the issue that is before me in recognition of the fact that this tenancy is going to continue for some time and the occupancy of the one bedroom suite will continue to an issue I offer the following comments.

There are legal principles which govern the interpretation of contractual terms. They are:

- Where there is no ambiguity in a written contract it must be given its literal meaning.
- Words must be given their plain, ordinary meaning, unless to do so would result in an absurdity.
- If there are two possible interpretations, one which is absurd or unjust, the other of which is rational, the one which is rational shall prevail.
- In cases of doubt, language should be construed against the drafter of the contract. This rule, called by its Latin name, is the "contra preferentem" rule.

None of the tenancy agreements for the various rental units in this house distinguish them in any way by a descriptor such as main floor, Unit #1, etc.

The landlord says the ad was for the upper level only. However, the ad actually says the rental unit is a four bedroom house, three bedrooms upstairs. If that is the case where is the fourth bedroom? Further, the landlord's testimony is that he showed the upper level and a space on the lower level, which he described as the entertainment room, to the tenant as being part of the rental unit. Clearly the rental unit was more than the upper level only.

All of this creates ambiguity as to what was actually rented. The ambiguity or doubt was created by the landlord who prepared the tenancy agreements, and so the language of the agreements must be considered against the landlord.

Finally, the landlord's own testimony is that he did not object when the tenant took steps consistent with the tenant thinking the one bedroom suite was part of his rental unit. He let the tenant clean and repair the area. The payment of \$100.00 is so far from the actual value of the work done that it cannot be considered as payment for the work. If the landlord was of the view that he had not rented the one bedroom suite to the tenant he should have said something as soon as he realized that the tenant was working in there. Instead, he said nothing until all the work was done.

With regard to the receipt for the keys, when this receipt was signed Mike was still living in the one bedroom suite.

Although I make no decision on the exact nature of the rental unit because I am not required to resolve this particular dispute these are the legal principles and facts that an arbitrator required to decide this issue would consider.

#### Conclusion

- a. The tenants' application is granted for the reasons set out above. The tenancy continues until ended in accordance with the legislation.
- b. As the tenants were successful on their application they are entitled to reimbursement from the landlord of the fee they paid to file this application. Pursuant to section 72 this amount may be deducted from the next rent payment due to 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: November 28, 2014

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Residential Tenancy Branch

