



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Landlord: OPR, MNDC, FF  
Tenant: CNC, MNDC, FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution. The landlord sought an order of possession and a monetary order. The tenant sought to cancel a notice to end tenancy and a monetary order.

The hearing was conducted via teleconference and was attended by the landlord, his legal counsel and the tenant.

The landlord submits that he served his notice of hearing package, with assistance of local police, to the tenant by leaving it on the porch on or about February 26, 2015, after attempting to serve it to the tenant personally in his vehicle. The tenant acknowledges receiving the package on February 26, 2015. The tenant submits he also received a second nearly identical package by registered mail on March 2, 2015.

Based on this testimony I find, pursuant to Section 89(d) of the *Residential Tenancy Act* (Act) that the landlord served the tenant with his hearing package by leaving the package in a conspicuous place at the address at which the tenant resides.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's claim for compensation. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claim is unrelated in that the basis for it rests largely on other facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the tenant's claim for compensation. I grant the tenant leave to re-apply for his financial claim.

In relation to the landlord's claim for compensation, I find his claim is also unrelated to the issue of the 1 Month Notice to End Tenancy for Cause and I exercise my discretion to dismiss the landlord's claim for compensation. I grant the landlord leave to re-apply for his financial claim.

#### Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to an order of possession for cause and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 55, 67, and 72 of the *Act*.

It must also be decided if the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

#### Background and Evidence

The parties agree they entered into a tenancy agreement in July 2014 for a month to month tenancy. The parties agree that no dollar amount of rent was agreed upon but rather the tenant would repair the rental unit in lieu thereof. The landlord submits this arrangement was to take until "the winter". The tenant submits that no specific time frame was discussed.

Both parties have provided a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on January 28, 2015 with an effective vacancy date of February 28, 2015 citing the tenant or a person permitted on the property by the tenant has significantly interfered with our unreasonably disturbed another occupant or the landlord; seriously jeopardized the health or safety or lawful right or interest of the landlord or another occupant and the tenant has engaged in illegal activity that has or is likely to adversely affect the quiet enjoyment, security, safety, or physical well-being or another occupant.

The tenant acknowledges receipt of the 1 Month Notice but submits that the landlord did not serve it in accordance with the requirements outlined on the second page of the Notice because the landlord tried to "stuff it through" the tenant's vehicle window.

The landlord submits that another tenant and his wife who also live on the same residential property had indicated to the landlord that the tenant was making them uncomfortable during a period of time in January 2015 when the landlord was away.

The landlord submits that he attempted to talk to the tenant about this issue when he returned and that he went to the rental unit but that the tenant would not let the landlord in to the rental unit; that the tenant threatened him by leaping at him with a closed fist. The landlord stated that upon this reaction he fled the tenant's rental unit and contacted police.

The tenant submits that he did not threaten the landlord in any way but rather it was the landlord who entered his rental unit with no authority to do so; that he took steps toward the landlord but did not leap or raise his fists. The tenant states that the landlord fleeing was a “pre-conceived idea” and that the landlord was not scared but rather he was “having the time of his life”.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- a) The tenant or a person permitted on the residential property by the tenant has
  - i. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - ii. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- b) The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property.

To be successful in ending a tenancy for cause the burden rests with the landlord to provide sufficient evidence to establish the cause that has given rise to the issuance of the 1 Month Notice to End Tenancy for Cause.

In the case before me, the landlord asserts that he had received complaints about the tenant’s behaviour towards another tenant and his wife and he attempted to discuss the issues with the tenant. I find that the tenant’s behaviour to the other tenant and the landlord’s wife is not sufficiently significant; unreasonable or serious to warrant ending the tenancy.

In regard to the landlord’s claim of being threatened by the tenant I note that the tenant disputes the landlord’s claims regarding the interaction. When two parties provide testimony identifying equally plausible but very different versions of events it is incumbent upon the party with the burden of proof to provide additional evidence to establish or corroborate that their version is the correct version to substantiate their claim.

I find the landlord has failed to provide such evidence and as such has failed to establish sufficient cause to end the tenancy. However, I caution the tenant that as a result of this proceeding the tenant is considered to be sufficiently warned that should he exhibit any type of threatening behaviour to any other occupant of the residential property or the landlord could result in the end of his tenancy.

### Conclusion

Based on the above, I dismiss the landlord's Application for Dispute Resolution and find the tenancy will remain in full force and effect. I also grant the tenant's Application for Dispute Resolution and cancel the 1 Month Notice to End Tenancy for Cause issued on January 29, 2015.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$50.00** comprised of the fee paid by the tenant for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: March 05, 2015

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Residential Tenancy Branch

