



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AUSTEVILLE PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause (the “Notice”), issued on March 23, 2015.

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.

The tenant confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions. The tenant did not submit any evidence submissions.

In a case where a tenant has applied to cancel a Notice, Rule 11.1 of the 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.

At the outset of the hearing the landlord indicated that they seek an order of possession.

### Issues to be Decided

Should the Notice issued on March 23, 2015, be cancelled?

### Background and Evidence

The tenancy began on May 30, 2013. Current rent in the amount of \$1,735.00 was payable on the first of each month. The tenant paid a security deposit of \$852.50.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on April 30, 2015.

The reason stated in the Notice was that the tenant has engaged in illegal activity that has, or is likely to:

- damage the landlord's property;
- adversely affect the quiet enjoyment, security or physical well-being of another occupant or the landlord; and
- jeopardize a lawful right or interest of another occupant or the landlord:

The landlord's agent testified that on March 2, 2015, another occupant of the residence observe a woman acting suspiciously and leaving the fitness building with a laundry hamper on wheels. The occupant then notice that a yoga mat was missing.

The landlord's agent testified that the building manager reviewed the security camera footage which showed the tenant taking the yoga mat. The agent stated that the video footage filed as evidence shows the tenant removing the yoga mat from the wall, placing the mat inside the laundry hamper, covering the mat with clothing and exiting the building.

The landlord's agent testified that they did not take immediate action as they wanted to see if the yoga mat would be returned or if the tenant would notify the building manager that the mat had been borrowed. However, the tenant did not do either of these things and they determined it was a deliberate act of theft.

The landlord's agent testified on Friday, March 6, 2015, they contacted the tenant late in the morning and told the tenant that they wanted to meet with them, in person, on Monday, March 9, 2015, at 9:00 am. The agent stated that they purposely did not state the reason for the meeting. The agent stated that shortly after the conversation the tenant returned the yoga mat to the fitness center.

The agent for the tenant testified that the tenant was not feeling well on March 2, 2015, and borrowed the fitness mat, as the tenant wanted to continue to use the mat in their rental unit. The agent stated that the tenant is 5' 1" in height and the mat was too heavy for them to carry and that is why the tenant used the laundry hamper on wheels to carry the mat. The agent further stated that there is nothing in the tenancy agreement that tells the tenant that they cannot remove items from the common area.

### Analysis

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

Under section 47 of the Act, a landlord may end a tenancy for cause by giving notice to end the tenancy for a stated reason. A Notice issued under this section of the Act must comply with section 52 of the Act – Form and content.

Upon my review of the Notice, I find the Notice complies with the requirements of section 52 of the Act.

I have considered all of the oral submissions and digital evidence submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- jeopardize a lawful right or interest of another occupant or the landlord:

In this case, I reject the evidence of the tenant's agent that the tenant was simply borrowing the yoga mat for the following reasons.

The evidence of the tenant's agent was that the tenant was not feeling well and wanted to use the yoga mat in their rental unit and because the tenant was 5'1" in height, used the wheeled hamper to transport the mat as it was heavy.

However, the video footage clearly shows the tenant had no difficulty removing the yoga mat from the wall; had no difficulties carrying the mat to the hamper, or folding the mat when they placed it into the hamper.

Further, if the tenant's story was believable that they did not know they were not allowed to remove items from the fitness center, there would be no reason why the tenant would deliberately hide the yoga mat by covering it with clothing. This action demonstrates that the tenant knew what they were doing was wrong and the only reasonable conclusion is that the tenant was stealing the landlord's property.

Although the yoga mat was subsequently returned to the fitness center, it was only after the landlord contacted the tenant and requested a meeting for an undisclosed purpose. I find if the tenant's story was believable that they simply borrowed the yoga mat, it would have been reasonable for the tenant to tell the landlord at that time. Rather than too silently return the yoga mat, as this action appears to be a deliberate attempt to hide their action of theft.

I find on March 2, 2015, the tenant engaged in an act of theft, jeopardizing the lawful right or interest of the landlord. As result, I find the Notice issued on March 23 2015, has been proven by the landlord and is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice.

However, as the landlord has accepted rent for May 2015, I find it appropriate to extend the effective vacancy date in the Notice to May 31, 2015, pursuant to section 66 of the Act.

As the tenancy legally ends on the extended effective vacancy date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **May 31, 2015, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court.

Conclusion

The tenant's application to cancel the Notice, issued on March 23, 2015, is dismissed.

The landlord is granted an order of possession, pursuant to section 55 of the Act.

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: May 14, 2015

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Residential Tenancy Branch

