



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC,

### 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 June 3, 2015, for money owed or compensation under the Act, to have the landlord comply with the Act, regulation or tenancy agreement and to recover the filing fee from the landlord.

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 parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

### Preliminary and procedural matters

In this matter CH is listed as a tenant in the tenant’s application; however, CH is not a tenant under the tenancy agreement. Therefore, I find CH is an occupant and has no legal rights or obligations under the Act. I have amended the style of cause to remove CH as a tenant.

The tenant has requested in their application to recover the filing fee from the landlord; however, the tenant was granted a fee waiver and no filing was paid. Therefore, I find it appropriate to dismiss this portion of the tenant’s application without leave to re-apply.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice to End Tenancy. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice to End Tenancy and the tenant’s application to

have the landlord comply with the Act. The balance of the tenant's application is dismissed, with leave to re-apply.

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.

### Issues to be Decided

Should the Notice issued on June 3, 2015, be cancelled?  
Should the landlord be ordered to comply with the Act?

### Background and Evidence

The tenancy began on June 30, 2014. Rent in the amount of \$950.00 was payable on the 30<sup>th</sup> of each month. The tenant paid a security deposit of \$475.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on July 15, 2015.

The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant of the landlord; and
- put the landlord's property at significant risk.

The landlord testified that the upstairs renter is calling and complaining about the tenant all the time. The landlord stated that they have not witnessed any of the incidents and this is a she said he said situation.

The landlord testified that on June 3, 2015, the tenant turned the water off to the upstairs rental unit. The landlord stated that they did not access of rental unit; however, the police attend later that day and spoke with the tenant.

The tenant testified that the tap is located in their rental unit. The tenant stated that they turned the tap to lower the pressure; however it was not turned off. The tenant stated it was only done to lower the water pressure in their unit and they were unaware that it would have any impact on the other renter. The tenant stated that they were not

notified by the landlord that a problem existed until the police attended the rental unit and they immediately rectified the problem.

The tenant testified that they want the landlord to provided proper written notice when they want access to the rental unit.

The landlord testified that they normally telephone or send a text message to the tenant.

### Analysis

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

How to end a tenancy is defined in Part 4 of the Act. Section 47 of the Act a landlord may end a tenancy by giving notice to end the tenancy for cause. 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 written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show the reasons stated in the Notice for the following reasons.

The landlord provided no specific dates of any incidents that significantly interfered with or unreasonably disturbed another occupant or any incident that put the landlord's property at significate risk, with the exception of June 3, 2015, which I will refer later in this decision. The other renter did not attend the hearing to provide any testimony and no written statement was provided.

While I accept an incident occurred on June 3, 2015, were the tenant turned the water pressure lower by using the tap located in their rental unit, which could impact and interfere with the other renter lawful rights. However, I accept the tenant's evidence that they believed the tap was only for their unit and that they had no knowledge at the time that it would impact the other rent. Once the tenant was made aware of the problem they turned the water tap back to the fullest level to rectify the problem. The tenant indicated they have not touch the tap since.

Based on the above, I find the Notice issued on June 3, 2015 has not been proven by the landlord. Therefore, I grant the tenant's application to cancel the Notice. The tenancy will continue until legally ended in accordance with the Act.

I also note in the landlord's written submission that they have referred to incidents that have occurred after the Notice was issued no testimony was provided and they were not relevant when Notice was issued. Any event that they may have occurred after the Notice was issued was not considered at this hearing.

In this case, the landlord indicated during the hearing that they will normally telephone or text a message to the tenant to gain access to the rental unit. However, those methods are not approved under the Act unless the tenant agrees and give permission for entry.

### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

(a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;

(b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:

(i) the purpose for entering, which must be reasonable;

(ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

(c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;

(d) the landlord has an order of the director authorizing the entry;

(e) the tenant has abandoned the rental unit;

(f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

Therefore, I Order the landlord to comply with the section 29 of the Act, as phone calls and text messages are not an approved method unless agreed upon by the parties.

### Settlement

The landlord agreed to have a dead bolt installed on the tenant's rental unit on August 12, 2015, between the hours of 2 pm and 5 pm. The tenant agreed to the date and times and no further notice is to be given.

### Conclusion

The tenant's application for a monetary order is dismissed with leave to reapply.

The tenant's application to cancel the Notice, issued on June 3, 2015, is granted.

The landlord is Order to comply with section 29 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: August 11, 2015

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Residential Tenancy Branch

