



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, RP, PSF, LAT, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated May 28, 2015 ("1 Month Notice"), pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 62;
- an order to the landlord to make repairs to the rental unit, pursuant to section 33;
- an order to the landlord to provide services or facilities required by law, pursuant to section 65;
- authorization to change the locks to the rental unit, pursuant to section 70;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses. "Witness PH" testified on behalf of the landlord at this hearing. This hearing lasted approximately 97 minutes, in order to provide both parties with a full opportunity to present their submissions and witnesses.

The tenant confirmed that he served the landlord with the tenant's dispute resolution hearing application and notice by way of posting to the landlord's door and the tenant's written evidence package (collectively "Application") by way of leaving a copy at the landlord's front door. The landlord confirmed receipt of the notice of hearing and five-page written evidence package only, not the tenant's application. At the outset of the hearing, I read aloud the tenant's application to the landlord. The landlord testified that he wished to proceed with the hearing on the basis of the tenant's entire Application,

despite the fact that he did not receive a copy. The landlord confirmed that he did not wish to request an adjournment of this hearing.

The tenant confirmed that he received a copy of the landlord's written evidence. The tenant testified that he wished to proceed with the hearing on the basis of the landlord's written evidence, despite the fact that he received it less than 7 days prior to this hearing, contrary to Rule 3.15 of the Residential Tenancy Branch ("RTB") *Rules of Procedure*. The tenant confirmed that he did not wish to request an adjournment of this hearing.

On the basis of both parties' consent, I proceeded with the hearing on the basis of the tenant's entire Application as well as the landlord's entire written evidence package.

The tenant confirmed receipt of the landlord's 1 Month Notice on May 29 or 30, 2015, by way of posting to his rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice.

#### Preliminary Issue – Severing of Tenant's Application

RTB Rule of Procedure 2.3 states that if in the course of a dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may dismiss unrelated disputes contained in a single application with or without leave to reapply.

I advised both parties that the central issue at this hearing was whether this tenancy was continuing. The remaining portions of the tenant's Application are unrelated to the Application to cancel the 1 Month Notice. At the conclusion of this hearing, I advised both parties that the remaining portions of the tenant's Application were dismissed with leave to reapply. These include the tenant's Application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, an order to the landlord to make repairs to the rental unit, an order to the landlord to provide services or facilities required by law, and authorization to change the locks to the rental unit.

#### Issues to be Decided

Should the landlord's 1 Month Notice be cancelled?

Is the tenant entitled to recover the filing fee for this Application from the landlord?

### Background and Evidence

Both parties agreed that this tenancy began on August 1, 2007 for a fixed term of one year, after which it transitioned to a month-to-month tenancy. This initial tenancy was with the tenant's girlfriend, "tenant TY," named as a tenant on the tenancy agreement. Both parties agreed that the tenant began living at the rental unit at the same time, but that he was not named on the tenancy agreement. The landlord signed a new tenancy agreement with the tenant on July 1, 2013 for a fixed term of one year, after which it transitioned to a month-to-month tenancy.

Monthly rent in the amount of \$900.00 is payable on the first day of each month. A security deposit of \$450.00 and a pet damage deposit of \$450.00 were paid by tenant TY and the landlord continues to retain both deposits. The landlord provided a copy of the written tenancy agreement. The tenant continues to reside in the rental unit.

The landlord issued the 1 Month Notice, with an effective move-out date of June 30, 2015. The notice indicates the following reasons for ending this tenancy:

- *Tenant is repeatedly late paying rent.*
- *Tenant or a person permitted on the property by the tenant has:*
  - *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
  - *put the landlord's property at significant risk.*
- *Tenant has caused extraordinary damage to the unit/site or property/park.*
- *Tenant has not done required repairs of damage to the unit/site*

The landlord stated that he was not pursuing his claims regarding extraordinary damage or required repairs of damage in the 1 Month Notice. The landlord indicated that the tenant caused a five-inch-diameter hole in the wall, as well as scratches in the window, which has been present for three to four years and which the tenant failed to fix.

The landlord stated that the tenant jeopardized his own health, safety and lawful rights as well as that of other tenants, by leaving trash everywhere, leaving moldy, rotten food outside, and leaving items all over the stove. The landlord stated that he did not submit photographs of the rental unit condition because the tenant asked him not to do so. The landlord indicated that the tenant's behaviour, as noted above, put the landlord's property at significant risk of mold and is a fire hazard. Witness PH testified that he attended at the rental unit to complete plumbing repairs on three to four occasions, that he noticed that there was a lot of clutter in the living room, kitchen and laundry room, such that he could hardly walk around, that the unit did "not smell good" and that

anything around the stove was not safe. The tenant stated that the landlord does not have any proof of rotten food or mold and that the landlord did not request for him to clean his unit by any specific deadline.

The landlord indicated that the main reason for issuing the 1 Month Notice was because the tenant was repeatedly late paying rent. Both parties agreed that the tenant has been late paying rent since the year 2010 and that the landlord agreed that the tenant could pay rent when he was able to afford it, as long as the tenant communicated with the landlord about when he would pay. The landlord stated that this was a verbal agreement, despite the fact that the tenancy agreement indicates that rent is due on the first day of each month.

The landlord confirmed that he accepted rent payments from the tenant after issuing the 1 Month Notice as well as after the effective date of the notice. The landlord indicated that rent is now paid in full by the tenant. The landlord noted that rent was paid on June 3 and 16, 2015 for June 2015 rent and July 6, 2015 for July 2015 rent. The tenant stated that he paid rent on June 8 and July 2, 2015.

The landlord confirmed that he did not issue receipts for the tenant's rent payments in June or July 2015. The landlord stated that he only accepted the rent for the tenant to live in the rental unit until the outcome of this hearing. The landlord maintained that he verbally communicated his intentions to end this tenancy to the tenant in June and July 2015 and by way of his written evidence for this hearing. The landlord indicated that at least one of these verbal conversations occurred after the tenant filed his Application.

The tenant testified that the landlord did not communicate his intentions regarding ending this tenancy. The tenant stated that it was his understanding that he could remain in the rental unit, as per the terms of his tenancy agreement, when the landlord accepted his rent in June and July 2015. The tenant provided copies of emails between the parties from December 21, 2014 to July 9, 2015. In one email, dated June 3, 2015, the landlord's agent indicates that partial rent payment is accepted, that if full rent and utilities are not received by the following week, then the tenant cannot stay in the rental unit. The email further indicates that the tenant can remain in the rental unit until the end of July 2015 on some conditions which the landlord will outline in another email and when the parties meet. The tenant responded on June 3 and 5, 2015, indicating that he is owed money from the landlord for work he performed for the landlord, to offset rent and utilities. The email further notes that the tenant was confused by the landlord's 1 Month Notice, as he believed that by settling his account with the landlord for rent, that he could remain in the rental unit, not that it would be his last month of occupancy. The remainder of the emails between the parties discuss other unrelated tenancy issues.

The tenant is also seeking to recover the \$50.00 filing fee for this Application from the landlord.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties and witness PH, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings are set out below.

According to subsection 47(4) of the Act, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the tenant receives the notice. The tenant received the 1 Month Notice on May 29 or 30, 2015, and filed his Application on June 6, 2015. Therefore, whether the tenant received the notice on either of the above dates, he is within the time limit under the Act. The onus, therefore, shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

The landlord abandoned his claims that the tenant caused extraordinary damage or did not complete required repairs of damage to the rental unit. Accordingly, I do not consider these reasons in the landlord's 1 Month Notice.

I find that the landlord has not provided sufficient evidence to demonstrate that the tenant seriously jeopardized the health or safety or lawful right of another occupant or the landlord or put the landlord's property at significant risk. Witness PH's biggest complaints were that the unit was cluttered and did not smell good. I do not find these to be sufficient to amount to a "serious jeopardy" to health, safety or lawful rights. The landlord did not provide documentary evidence of fire hazards to the stove or mold from rotten food. Although the landlord offered to provide photographs of the rental unit after this hearing, I declined this offer, given that the tenant would not have a chance to respond to the landlord's photographs after this hearing. I also advised the landlord that he had sufficient time prior to this hearing, as the tenant filed his application on June 6, 2015, to provide any evidence that he wished to rely upon but that he chose not to do so because he said the tenant asked him not to.

Regarding the landlord's claim about the tenant being paying rent late repeatedly, I find that the tenant paid rent late as per the pattern established between the parties for five years since 2010, with the explicit agreement of the landlord. The landlord confirmed

that he had not issued any other notices to end tenancy, including 10 Day Notices to End Tenancy for Unpaid Rent ("10 Day Notices"), to the tenant.

Residential Tenancy Policy Guideline 11 discusses the issue of waiver of a 1 Month Notice:

*A Notice to End Tenancy can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only by the express or implied consent of both parties. The question of waiver usually arises when the landlord has accepted rent or money payment from the tenant after the Notice to End has been given. If the rent is paid for the period during which the tenant is entitled to possession, that is, up to the effective date of the Notice to End, no question of "waiver" can arise as the landlord is entitled to that rent.*

*If the landlord accepts the rent for the period after the effective date of the Notice, the intention of the parties will be in issue. Intent can be established by evidence as to:*

- whether the receipt shows the money was received for use and occupation only*
- whether the landlord specifically informed the tenant that the money would be for use and occupation only, and*
- the conduct of the parties.*

*There are two types of waiver: express waiver and implied waiver. Express waiver arises where there has been a voluntary, intentional relinquishment of a known right. Implied waiver arises where one party has pursued such a course of conduct with reference to the other party so as to show an intention to waive his or her rights. Implied waiver can also arise where the conduct of a party is inconsistent with any other honest intention than an intention of waiver, provided that the other party concerned has been induced by such conduct to act upon the belief that there has been a waiver, and has changed his or her position to his or her detriment. To show implied waiver of a legal right, there must be a clear, unequivocal and decisive act of the party showing such purpose, or acts amount to an estoppel.*

The landlord accepted rent in July 2015, after the effective date of the 1 Month Notice on June 30, 2015. The landlord did not issue any receipts indicating "use and occupation only." The landlord stated that he verbally advised the tenant about his intention to end the tenancy, while the tenant denies this fact. While the landlord's

email from June 3, 2015 indicates a possible intention to end this tenancy, it also offers options and conditions regarding payment of rent. Further, this email is from prior to the effective date of the 1 Month Notice. The subsequent emails only discuss the tenant's understanding that his tenancy would not be ending and that he could pay rent to continue his tenancy agreement with the landlord. The landlord does not refer to ending this tenancy in the subsequent emails which end on July 9, 2015, after the landlord accepted July 2015 rent from the tenant. The landlord did not provide sufficient documentary evidence that he intended to end this tenancy. The landlord's own written evidence indicates that he accepted rent late from the tenant due to the successful relationship between the parties and that the tenant established a pattern of paying rent late. I do not find that the conduct between the parties, whether verbal or written, after the landlord accepted rent after the effective date of the 1 Month Notice, established the landlord's intention to pursue an end to this tenancy.

I find that the tenant relied on the landlord's conduct, amounting to waiver, of continuing to accept July 2015 rent without issuing any receipt or communicating that an end to this tenancy was still desired. I find that the tenant continued to pay rent in July 2015, assuming that his tenancy would continue.

For the above reasons, and given the conduct of the parties, I find that the landlord waived his rights to pursue an Order of Possession based on the 1 Month Notice. I find that the landlord reinstated this tenancy by accepting full rent payments from the tenant after the effective date stated on the 1 Month Notice.

On a balance of probabilities and for the reasons stated above, I allow the tenant's application to cancel the landlord's 1 Month Notice, dated May 28, 2015. The landlord's 1 Month Notice, dated May 28, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was successful in his Application, I find that he is entitled to recover the \$50.00 filing fee paid for the Application.

### Conclusion

The tenant's Application to cancel the landlord's 1 Month Notice, dated May 28, 2015, is allowed. The landlord's 1 Month Notice, dated May 28, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$50.00 from a future rent payment at this rental unit, in full satisfaction of the monetary order for the filing fee for this Application.

The tenant's Application for an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, an order to the landlord to make repairs to the rental unit, an order to the landlord to provide services or facilities required by law, and authorization to change the locks to the rental unit, is 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: August 11, 2015

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Residential Tenancy Branch



