



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC LRE OLC

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Both parties agreed that they had received the other party's materials for this hearing. The landlord made an oral application at this hearing for an Order of Possession if the tenant was unsuccessful in his application to cancel the notice to end tenancy.

### Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an order of possession?

Is the tenant entitled to an order requiring the landlord to comply with the *Act* and/or an order to suspend or set conditions on the landlord's right to enter the rental unit?

### Background and Evidence

This tenancy began on September 1, 2015 as a month to month tenancy with a rental amount of \$900.00 payable on the first of each month. A copy of the residential tenancy agreement was submitted by the tenant for evidence at this hearing. The landlord testified that he continues to hold a \$475.00 security deposit paid by the tenant at the start of the tenancy.

The landlord testified that, on June 28, 2015, he personally served the tenant with a 1 Month Notice to End Tenancy. The tenant confirmed receipt of that notice. The landlord's 1 Month Notice, addressed to two tenants including Tenant AB indicated the grounds to end the tenancy;

- Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord...
- Tenant has engaged in illegal activity that has, or is likely to ... jeopardize a lawful right or interest of another occupant or the landlord.
- Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord referred to the residential tenancy agreement submitted. In the section titled 'what is included in the rent', the following items were checked off, indicating their inclusion in the rental agreement; water; electricity; heat; stove and oven; refrigerator; window coverings; laundry (free); parking for vehicles. Within the rental agreement, there is a section with a box where one would indicate how many vehicles may park. That box is blank. Below the parking field, another box has typewritten, "street parkig [sic], No Pet, No Smoking". The landlord testified that the agreement meant that only street parking was available to the tenant and that no parking in the driveway of the rental property. The tenant testified that he had been provided parking at his unit as part of his tenancy and that the agreement merely noted the availability of street parking. He testified that, if the landlord no longer wanted him to park in the driveway, he would not do so – he would park elsewhere.

The landlord testified that he asked the tenant to move his car on several occasions and not to park in the driveway. The landlord testified that he does lawn and landscaping maintenance at the residence and that he regularly needs to park his trailer with landscaping supplies in the driveway. He testified that the bylaws in the area do not allow him to park his trailer on the street. The landlord testified that, after verbal requests failed, he provided a written notice to the tenant, asking him to find other parking arrangements within 48 hours. The landlord provided undisputed testimony that the tenant did not make other parking arrangements at that time.

The tenant submitted that the landlord has other motivation for trying to end this tenancy. The tenant testified that he believes the landlord wants to renovate his rental unit. The tenant also testified that he is willing to meet the landlord's request to move his

car(s) out of the driveway so thereby addressing the landlord's only concern. The landlord stated that the tenant has become disrespectful and volatile and that he no longer wishes to have the tenant in his rental premises.

The tenant testified that he wants to remain in the rental premises. He testified that the second part of his application for dispute resolution is to require the landlord to both comply with the *Act* and for an order to limit the landlord's entrance to the rental unit. The tenant testified that, on occasion, the landlord will attend to the residence without any prior notice. The tenant testified that he has asked the landlord to please call before he enters the rental unit. The tenant noted that he has a wife home with his young baby and they are nervous in the house when they are alone.

The tenant also testified that the landlord will often attend to do yard maintenance without notice to the tenants. He testified that, on previous occasions, the landlord has worked cutting down without advising the tenants in advance. The tenant asked for an order that the landlord be required to phone ahead to give notice of his attendance to the residential property for access to the unit or yard work. He submitted that he does not necessarily require the formal notice that is provided under the *Act* but that he would like a telephone call three to four hours prior to the landlord attending his rental premises.

### Analysis

When a tenant makes an application to cancel a notice to end tenancy, the burden falls to the landlord to justify the grounds to end the tenancy and the validity of the notice. Based on the landlord's undisputed evidence, the tenant has parked in the driveway of his rental unit and spoken disrespectfully to the landlord. The landlord claimed that these actions by the tenant significantly interfered with or unreasonably disturbed the landlord and/or breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I note that the landlord also relied on the ground that the tenant has engaged in illegal activity that has or is likely to jeopardize a lawful right or interest of the landlord. He presented no evidence, in his testimony or in documentary submissions that the tenant has engaged in any form of illegal activity. Therefore, I will not consider this ground of the notice to end tenancy any further.

I also will not consider whether the residential tenancy agreement required the tenant to park in the driveway or elsewhere. Based on the all of the testimony by both parties,

and consideration of the residential tenancy agreement for this tenancy, I do not find that parking is a material term of the tenancy.

I find that the provision of parking is not a material term of this tenancy because I accept the testimony of the tenant and the evidence at this hearing that;

- The parties did not agree in their communications prior to this hearing or at this hearing with respect to the provision of parking;
- The tenant has stated that he has made attempts and is prepared to make further attempts to satisfy the landlord's requests regarding parking;
- The tenant testified that he did not refuse to correct the situation;
- The tenant testified that he had been unable to fully satisfy the landlord's requests regarding parking to this date but that he had continued to communicate his willingness to satisfy the requests;
- The tenant has provided sworn testimony that he has found somewhere else to park and can now accommodate the landlord's request regarding the parking.

I also accept that the provision of parking was not clearly defined (or ambiguous) within the written tenancy agreement. The legal rule of *Contra Proferentem* is relevant in this circumstance. The rule provides that if there is an ambiguous clause in a contract or agreement, it will be interpreted against the party responsible for drafting the clause. Therefore, this ambiguity within the tenancy agreement will be resolved in favour of the tenant.

Based on all of these factors, I find that the tenant has not breached a material term of the tenancy nor has he failed to correct any alleged breach in a reasonable time after written notice to do so. I find that the tenant is entitled to an opportunity, now that he has been notified and clearly informed of the landlord's position, to correct the alleged breach.

I also do not find that the tenant significantly interfered with or unreasonably disturbed the landlord. It is reasonable to assume, based on the testimony of the landlord that the landlord has been perturbed and disturbed by the ongoing parking dispute between the two parties. However, the standard with which to consider the end of a tenancy is that a landlord or another occupant has been **unreasonably** disturbed or **significantly** interfered with. Based on the limited testimony of the landlord, I do not find that the landlord has provided evidence to meet the burden of proof, on a balance of probabilities that he was **unreasonably** disturbed. I find that any disturbance to the landlord is within the realm of the normal landlord-tenant relationship.

I am not satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The tenant made an application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. In this case, the tenant has successfully disputed this notice to end tenancy. The 1 Month Notice to End Tenancy for Cause should be cancelled. The tenancy will continue.

With respect to the tenant's secondary application for an order that the landlord comply with the *Act*, section 62(3) of the *Act* is relevant;

62 (3) The director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

The tenant sought to have set restrictions on the landlord's attendance to the residential premises, the rental unit and the yard of the property. He referred in his submissions to section 29 of the *Act*.

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).

Based on the undisputed testimony of the tenant with respect to the landlord's attendance at the rental premises, I find that the tenant is entitled to an order that the landlord comply with section 29 of the *Act*. Further to section 29 of the *Act*, I order that the landlord restrict his attendance to the rental unit by confirming 24 hours in advance of attending the premises that the tenant gives permission to enter the rental premises including the yard. While the landlord generally attends the premises to meet his obligations as a landlord, it is essential that he respect the tenant's rights when accessing the premises.

### Conclusion

The landlord's Notice to End Tenancy is cancelled. The tenancy will continue.

I order that the landlord comply with section 29 of *the Residential Tenancy Act*.

I further order that the landlord confirm his attendance to the residential premises at least 24 hours prior to his entering the premises, including the yard.

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: September 18, 2015

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Residential Tenancy Branch

