



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CO.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened as a result of the tenants' application for dispute resolution under the *Residential Tenancy Act* (the "Act"). The tenants applied to cancel a 1 Month Notice to End Tenancy for Cause dated July 29, 2015.

The tenants, a support worker for the tenant, an agent for the landlord (the "agent"), and a building manager for the landlord attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me. A summary of the testimony and documentary evidence presented is provided below and includes only that which is relevant to the hearing.

The tenants confirmed that they received the documentary evidence package from the landlord and that they had the opportunity to review the landlord's documentary evidence prior to the hearing. The tenants confirmed that they did not submit documentary evidence with their application. I find the tenants were served in accordance with the *Act*.

### Issue to be Decided

- Should the 1 Month Notice dated July 29, 2015 be cancelled?

### Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A month to month tenancy began on September 27, 2012, with the new landlords although the parties indicate that the original tenancy with the former landlords began in 2010. Currently, monthly rent in

the amount of \$904.56 is due on the first day of each month. A security deposit of \$425 was paid by the tenants at the start of the tenancy.

The tenants confirmed receiving a 1 Month Notice dated July 29, 2015 on July 30, 2015, with an effective vacancy date of August 31, 2015. The tenants disputed the 1 Month Notice on August 6, 2015 which is within the permitted 10 day timeline under section 47 of the *Act*. The landlord listed the following causes on the 1 Month Notice:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. 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.
3. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

A previous 1 Month Notice was dated May 22, 2015 alleging that the tenants were responsible for the introduction of bedbugs into the unit and had failed to sufficiently carry out preparations required for ridding the bugs. That 1 Month Notice was cancelled on July 17, 2015 following a previous hearing held on July 14, 2015. In the July 17, 2015 decision, the Arbitrator wrote that even if the tenants were not able to adequately prepare the unit for bed bug treatment, she made a finding that the landlord failed to mitigate the spread of the bugs themselves by failing to ensure the unit at least could be prepared for the treatment. The Arbitrator also questioned how the tenants could be held solely responsible for the preparation of a repair site when the tenants did not cause the damage to the site in the first place. The file number of that decision has been included on the front page of this decision for ease of reference.

Since that time, the agent testified that the tenants were served with another 1 Month Notice on July 29, 2015 due to bed bugs in the rental unit, and due to the tenants' behaviour and attitude. During the hearing, the agent and building manager described several attempts to treat bed bugs and several inspections with a canine to detect for bed bugs. While both parties had their own version of each treatment and inspection for bed bugs, both parties did agree that as of September 28, 2015, the most recent canine inspection resulted in the detection of no bed bugs in the rental unit.

Regarding the landlord's concern related to the tenants' behaviour and attitude, the agent testified that during the July 29, 2015 bed bug inspection, the male tenant was very aggressive and rude towards to the bed bug technician, which the male tenant denied. The documentary evidence submitted by the landlord alleges that the police

were called as a result of the tenants' behaviour during the bed bug treatment; however, during the hearing, the agent clarified that the police were actually called for a different reason, and was not related to the tenants' behaviour during the bed bug treatment.

The agent provided a phone number for a bed bud technician, B.M., to call as a witness during the hearing. B.M. was not available after a lengthy attempt to contact him during the hearing. The agent confirmed that he had not arranged in advance prior to the hearing to have any witnesses ready to testify, with direct contact numbers, or to call into the hearing.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When tenants dispute a Notice, the onus of proof reverts to the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, the Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The landlord issued a 1 Month Notice dated July 29, 2015 after a previous 1 Month Notice dated May 22, 2015 was cancelled on July 17, 2015 by a previous Arbitrator after it was determined that the causes were not proven and that the 1 Month Notice was invalid as a result. The July 29, 2015 1 Month Notice alleges three causes which are described above. The agent and building manager testified under oath that the 1 Month Notice was issued due to bed bugs in the rental unit, and due to the tenants' behaviour and attitude.

Given that the previous 1 Month Notice dated May 22, 2015 was cancelled, I have only considered evidence presented after May 22, 2015. While both parties provided different versions of the bed bug issue, both of which I find equally probable, both parties did agree that as of September 28, 2015, the most recent canine inspection of the rental unit, there were no bed bugs detected in the rental unit. As a result, **I find** that the landlord has failed to meet the burden of proof regarding bed bugs in the rental unit supporting any of the three causes listed on the 1 Month Notice.

Regarding the landlord's concerns related to the tenants' behaviour and attitude, **I find** that the landlord has failed to meet the burden of proof. I have considered the fact that

the agent testified under oath that while their documentary evidence alleged that he police were called due to the tenants' behaviour towards the bed bug technician, during the hearing, the agent testified that the police were actually called for a different reason. Furthermore, the landlord was unable to present a witness during the hearing to substantiate the claim that the male tenant was aggressive or rude towards the bed bug technician. The male tenant also denied that he was aggressive or rude towards the beg bug technician. In addition, the landlord failed to submit witness statements or other corroborating evidence in support of the landlord's concerns regarding the tenants' behaviour and attitude. As the landlord has failed to prove that the 1 Month Notice dated July 29, 2015 was valid, **I cancel** the Notice dated July 29, 2015, due to insufficient and contradictory evidence.

**I ORDER** that the tenancy to continue until ended in accordance with the *Act*.

#### Conclusion

The tenants' application is successful.

The 1 Month Notice dated July 29, 2015 is cancelled. The tenancy continues until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 19, 2015

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Residential Tenancy Branch

