



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GOLDEN GOALS SERVICES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

### **Dispute Codes**

CNC, OPC, FF

### **Introduction**

This hearing dealt with cross-applications by the parties. The tenant applied to cancel a One Month Notice to End Tenancy For Cause (the Notice), dated July 29, 2015, with an effective date of August 31, 2015, as well as to dispute the delivery of a utility under the tenancy agreement, namely, cable service. The landlord sought an Order of Possession pursuant to the 1 month Notice to End, and to recover the filing fee.

Both parties attended the hearing and were given opportunity to present all relevant evidence and relevant testimony in respect to their claims and to make relevant prior submission of document evidence to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged receiving the evidence of the other.

The tenant was informed that their application respecting the cable utility was not sufficiently related to their dispute to cancel the landlord's Notice to End and as a result, their application in this respect would not be considered, and is hereby preliminarily **dismissed, with leave to reapply**. The hearing proceeded on the merits of the remaining issues of the cross-applications: the landlord's Notice to End for Cause.

It must be noted that in this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for sufficient reasons as stated in the Notice to End.

### **Issue(s) to be Decided**

Is the notice to end tenancy valid and issued for valid and sufficient reasons?  
Should the Notice to End dated July 29, 2015 be set aside?  
Is the landlord entitled to an Order of Possession?  
Is the landlord entitled to recover their filing fee?

### **Background and Evidence**

This tenancy began March 01, 2014. An abundance of evidence was submitted including a copy of the tenancy agreement and a copy of the Notice to End. The Notice to End was issued for the following reasons;

- *tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- *tenant has put the landlord's property at significant risk.*
- *tenant has engaged in illegal activity likely to damage the landlord's property*
- *tenant has caused extraordinary damage to the unit.*
- *Tenant has assigned or sublet the rental unit without the landlord's written consent*

The tenant disputes the Notice to End. Both parties acknowledge that the tenancy relationship is acrimonious and disputatious.

The landlord testified and submitted into evidence that the *sole 2* reasons for seeking to end the tenancy and for issuing the 1 Month Notice to End are: *that the tenant is parking a vehicle on the residential property without the consent of the landlord and for which parking is not included as part of the contractual tenancy; and, that the tenant has sublet the rental unit without the knowledge of the landlord - to a person unknown to the landlord.*

The parties acknowledged that the tenant has never vacated from the unit and continues to reside there, but, rather, has acquired a roommate to offset the rent. The landlord claims to not have any information about the roommate to which information they are entitled, so as to appropriately administer the tenancy and the residential property for the safety and benefit of all occupants and the landlord. As of this hearing the parties acknowledge the landlord is currently better informed, however the tenant agreed to provide the landlord with information about the roommate.

The parties agree that the tenant does not have a right under the tenancy agreement to occupy the landlord's parking area with their vehicle and the landlord acknowledged it was available to them to have the vehicle towed at an expense, but has not. The tenant argued and provided they received permission from a previous building manager to use the parking space. None the less, the tenant testified they will have the vehicle removed forthwith.

### **Analysis**

In this type of application, the burden of proof rests with the landlord to provide evidence that the Notice was validly issued for *sufficient* reasons as claimed.

I find the landlord has not proven the tenant has sublet or assigned the unit, but rather, I find the tenant has taken a roommate. As a result, the Notice to End on this reason claimed by the landlord must fail. Never the less, it is acknowledged by the parties that the landlord has a duty of care to all occupants of the residential property and should possess reasonable knowledge about the roommate.

I find that the tenant does not have a right under the tenancy agreement to occupy a parking space on the landlord's property and that in so doing the tenant is effectively trespassing. To that extent I find it has always been available to the landlord to take action and resolve this aspect of their dispute, but has chosen not to. Alternatively, I find that the tenant provided some document evidence they were extended verbal permission to use the parking space by a previous representative for the landlord, however I find this arrangement is not sufficient to establish the tenant has a right to its occupation. In the face of the ambiguity this issue has clearly created in the parties I find the landlord cannot fairly rely on the reasons of the Notice to End in order to end the tenancy based on the tenant occupying a parking space not originally agreed to in the written tenancy agreement. I find the landlord has not provided sufficient evidence in support of their reasons to end the tenancy. As a result, the Notice to End on this reason claimed by the landlord must also fail. None the less, it must be noted that the parties agree the tenant's vehicle will be moved, forthwith.

As a result, I find the landlord has not met their burden in this matter. I find that the landlord has not provided evidence the 1 Month Notice to End was issued for *sufficient* reasons. As a result I am unable to establish that the landlord issued the tenant a valid Notice to End. Therefore, I **Order** the Notice to End dated July 29, 2015 **cancelled**, and of no effect, with the further result that the landlord's application is **dismissed**.

### **Conclusion**

The tenant's application, in relevant part, is granted. The landlord's Notice to End is set aside and is of no effect. The tenancy continues.

The remainder of the tenant's claims on application are dismissed, with leave to reapply.

**The Decision is final and binding on both parties.**

*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: October 21, 2015

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Residential Tenancy Branch

