



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding QUINN MANOR  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, AAT, LA, FF (Tenant's Application)  
                                 OPC, FF (Landlord's Application)

### Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed August 17, 2015, the Tenant sought to cancel a 1 Month Notice to End Tenancy for Cause issued August 5, 2015 (the "Notice"), authority to sublet the rental unit and change the locks and to recover the filing fee. In the Landlord's Application filed August 2, 2015 the Landlord sought an Order of Possession based on the Notice and to recover the filing fee.

Both parties appeared at the hearing. The Tenant appeared on his own behalf and L.A. appeared on behalf of the Landlord. The hearing process was explained and the participants were asked if they had any questions. The participants provided affirmed testimony and the parties were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and witnesses, and make submissions to me.

Residential Tenancy Branch Rules of Procedure Rule 11.1 provides that when a Tenant applies to set aside a Notice to End Tenancy, the respondent Landlord must present their case first.

### Preliminary Matter

The Tenant confirmed he had not changed the locks on the rental unit nor had he sublet. He stated when he was originally denied the opportunity to sublet when his tenancy was for a fixed term. He also stated that he understood that subletting was not permitted now that his tenancy was month to month as he had the option to simply end the tenancy. Further, he confirmed he was aware that he would need to provide the Landlord with keys to his locks, even if he did change them. He confirmed he wished to withdraw his application for Orders pursuant to section 70(2) and 65(1).

### Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Landlord entitled to an Order of Possession?
3. Should either party recover the amount paid to file their application?

### Background and Evidence

A fixed term tenancy began on May 15, 2012 and converted to a month to month tenancy after the expiration of the one year term. Monthly rent was payable in the amount of \$970.00.

### Landlord's Evidence

L.A. testified that she issued a 1 Month Notice to End Tenancy for Cause on August 5, 2015. The reasons cited in the Notice were as follows:

- The Tenant is repeatedly late paying rent
- The 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; and
  - put the landlord's property at significant risk

(the "Notice").

She further testified that the Notice was served by posting to the rental unit door on August 8, 2015. Section 90(c) of the Act provides that documents served in this manner are deemed served three days later; namely August 11, 2015.

Section 47 (f) provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. In this case the Tenant applied on August 17, 2015 such that he applied within the time required by the Act.

L.A. testified as to the reasons for issuing the notice as follows

- The Tenant was late paying rent in November of 2014 as well as in July of 2015.
- The Tenant hooked up a dishwasher in the rental unit which, on or about May 18, 2015, and caused flooding in the rental unit as well as two suites located below the rental unit.
- The Tenant has refused her access to the rental unit since May 18, 2015, despite being served several Notices to Enter the rental unit pursuant to section 29 of the *Act*.
- The Tenant informed her, by email that he would be changing the locks on the rental unit and subletting. The Landlord characterized the Tenants' communication as abusive.

The Landlord failed to introduce copies of the Notice of Entry into evidence. The Landlord also failed to introduce a copy of the residential tenancy agreement, although she conceded that the agreement made no mention of portable dishwashers.

#### Landlord's Documentary and Digital Evidence

At the outset of the Tenant's testimony, the Tenant testified that L.A. had only served him with three photos. L.A. confirmed that she only sent three photos to the Tenant as she believed that the Tenant would have had his own copies of communication between the parties, as well as the audio recording she had provided in evidence.

Rules 3.15 and 3.17 of the *Residential Tenancy Branch Rules of Procedure* provides as follows:

##### **3.15 Respondent's evidence**

To ensure fairness and to the extent possible, the respondent's evidence must be organized, clear and legible.

The respondent must ensure documents and digital evidence that are intended to be relied on at the hearing are served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. In all events, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than 7 days before the hearing.

In the event that evidence is not available when the respondent submits and serves their evidence, the Arbitrator will apply Rule 3.17 [*Consideration of new and relevant evidence*].

See also Rules 3.7 [*Evidence must be organized, clear and legible*] and 3.10 [*Digital evidence*]

### **3.17 Consideration of new and relevant evidence.**

Evidence not provided to the other party and the Residential Tenancy Branch in accordance with Rules 3.1, 3.2, 3.10, 3.14 and 3.15 may or may not be considered depending on whether the party can show to the Arbitrator that it is new and relevant evidence and that it was not available at the time that their application was filed or when they served and submitted their evidence.

The Arbitrator has the discretion to determine whether to accept documentary or digital evidence that does not meet the criteria established above provided that the acceptance of late evidence does not unreasonably prejudice one party.

Both parties must have the opportunity to be heard on the question of accepting late evidence.

If the Arbitrator decides to accept the evidence, the other party will be given an opportunity to review the evidence. The Arbitrator must apply Rule 6.3 [*Whether to adjourn the dispute*]

I find that L.A., in failing to serve the Tenant with her documentary and digital evidence, did not comply with the *Rules*. I further find that the evidence was available at the time she served and submitted her evidence to the Branch, and that she simply failed to provide it to the Tenant. In doing so, she denied the Tenant the opportunity to know the case against him, which is one of the principles of Natural Justice. As the Landlord has the onus of proving the Notice should be upheld, and failed to provide the Tenant with her evidence, I exercise my discretion and decline to consider this evidence.

### **Tenant's Evidence**

The Tenant testified that he has not refused the L.A. entry, only requested that he be permitted to remain in the rental unit at the time of any entry/inspection. He further stated that communication between himself and L.A. had deteriorated such that he had concerns about communication with her without a third party present and that he has informed her that it is his preference that the owner, or another third party be present when any entry/inspection occurs. He confirmed that in June of 2015 L.A. and the owner entered his rental unit.

The Tenant also testified that he sent an email to the Landlord on May 21, 2015 wherein he suggested that L.A. enter his rental unit the following morning, on May 22, 2015. He stated that despite being offered an alternate opportunity, L.A. failed to respond to his suggestion and did not enter the rental unit.

He further testified that he has had the dishwasher since he moved in and that the Landlord has seen it on several occasions and did not indicate it needed to be removed. He further confirmed that he has not received any written warnings, or direction that he must remove the dishwasher.

The Tenant testified that even though he had applied to dispute the Notice, L.A. told him to box up all his possession or she would call the police on him. He further testified that he pays his rent in cash as he cannot afford the cost of cheques, and that he has difficulty obtaining cash receipts from the Landlord.

#### Landlord's Reply

L.A. was provided an opportunity for a brief reply. She confirmed the Tenant had suggested May 22, 2015 as a date to inspect the unit, but characterized this as simply his attempt to delay the inspection.

When I asked L.A. if she had informed the Tenant he was not to have a dishwasher in his rental unit, L.A. did not respond to my question.

L.A. then stated that the Tenant had paid rent for September 2015 and that she had issued a receipt for "use and occupancy only". When I asked her if he had paid anything for October 2015, she did not reply. I asked her again and she again did not respond.

I then asked L.A. if she had any further evidence and she stated she did not.

When I informed the parties that I would reserve my decision and consider their evidence L.A. responded by thanking me. I found L.A.'s lack of response to my questions regarding the dishwasher and October payment to be intentional as she appeared to be able to hear me when I asked her if she had further evidence, and when I concluded the hearing.

### Analysis

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice under the *Act*. The Landlord testified that Tenant was late once in November of 2014 as well as in July of 2015. Accordingly, I find that the Landlord has failed to prove the Tenant is repeatedly late paying rent.

The Landlord further testified that the Tenant hooked up a dishwasher in the rental unit on or about May 2015 which caused flooding in the rental unit as well as two suites located below the rental unit. L.A. confirmed that the water had been cleaned up at that time and failed to provide any evidence that the Tenant's dishwasher continued to pose a problem for the rental unit or other occupants of the rental building. The Tenant testified that he had a portable dishwasher from the outset of the tenancy and that at no time did the Landlord inform him that his dishwasher was not permitted.

In failing to introduce the residential tenancy agreement, or any evidence that the Tenant was informed portable dishwashers were prohibited, I am unable to find that the Tenant.

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 Tenant denied the L.A.'s allegations that he has refused her access to the rental unit and stated he had simply requested that he be able to be in attendance. He also provided testimony that he had proposed an alternate time for the entry/inspection. L.A. confirmed she had received his proposed date, but stated that he was simply "delaying" her attempts to enter the rental unit. She did not provide any evidence to support a finding that she had asked to enter the unit after May 2015, or any evidence that the Tenant had refused such requests.

The Tenant denied L.A.'s allegation that his communication was abusive, but admitted that their communication had broken down.

In all the circumstances, I find there is insufficient evidence to find on a balance of probabilities that the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord and put the landlord's property at significant risk.

For the foregoing reasons, I grant the Tenant's request to cancel the Notice. The Landlord's Application for an Order of Possession is dismissed. The tenancy will continue until ended in accordance with the Act.

The Tenant, having been successful, shall be entitled to recover of the filing fee and shall be granted a one-time credit of \$50.00 towards his next month's rent.

### Conclusion

The application is granted and the Notice is set aside. The Tenant is to be credited the filing fee as a one-time \$50.00 reduction in his next month's rent.

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: November 2, 2015

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Residential Tenancy Branch

