



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, O

### 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 August 31, 2015 ("1 Month Notice"), pursuant to section 47; and
- other unspecified relief.

Both parties attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The tenant had an advocate observing the hearing, but she did not provide testimony at this hearing. The tenant testified that he was competent and able to participate in this hearing, despite the fact that he was in the hospital during the time of the hearing. This hearing lasted approximately 75 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package ("Application"). In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

The landlord testified that he served the tenant with his written evidence package by way of placing it under the tenant's rental unit door. The tenant stated that he did not receive any written evidence from the landlord. As the tenant did not receive the written evidence and was not served in accordance with section 88 of the *Act*, I advised the landlord that I could not consider his written evidence at this hearing or in my decision. The written evidence consists of a witness statement from SW, a promise to appear and undertaking given to a peace officer regarding the tenant, two typewritten statements from the landlord regarding this hearing and black and white photographs of laundry machines at the rental building.

The landlord submitted two further pages of written evidence regarding the tenant on November 15, 2015, after the hearing concluded. The landlord submitted this evidence on his own accord, as I did not request this evidence. I cannot consider this evidence in my decision, as it was not submitted prior to this hearing, as required by Rule 3.1 of the Residential Tenancy Branch *Rules of Procedure*. Further, the tenant did not have the opportunity to respond to this evidence.

The tenant confirmed receipt of the landlord's 1 Month Notice on August 31, 2015, by way of the landlord leaving a copy under his door. The landlord confirmed that he personally served the tenant with the notice. In accordance with section 88 of the *Act*, I find that that the tenant was duly served with the landlord's 1 Month Notice. Although the tenant claimed that he was not served according to one of the methods outlined in section 88, I find that he was sufficiently served for the purposes of section 71(2)(c) of the *Act*, as he received the notice, reviewed it and disputed it.

During the hearing, the landlord made an oral request for an order of possession for cause.

#### Issue 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 other unspecified relief?

#### Background and Evidence

The landlord testified that this month-to-month tenancy began around July or August 2011. Monthly rent in the amount of \$600.00 is payable on the first day of each month. A security deposit of \$275.00 and a pet damage deposit of \$275.00 were paid by the tenant (collectively "deposits"). The landlord stated that he became the landlord of this rental building approximately four years ago. The landlord stated that the former landlord retains the tenant's deposits. The tenant continues to reside in the rental unit.

The landlord issued the 1 Month Notice, with an effective move-out date of September 30, 2015, for the following reasons:

- *Tenant or a person permitted on the property by the tenant has:*
  - *significantly interfered with or unreasonably disturbed another occupant or the landlord;*

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *Tenant has engaged in illegal activity that has, or is likely to:*
  - *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.*

The landlord stated that two to three weeks prior to October 8, 2015, the tenant stole money from the laundry machines on the second and third floor of the rental building. The landlord explained that the machines were turned upside down and the coins were taken from the machines. The landlord maintained that although he does not have any proof that the tenant did this, as there were no witnesses, it was similar to the incident that occurred later on October 8, 2015, so it must have been the tenant that committed these acts. The tenant denied the landlord's allegations.

The landlord testified that on October 8, 2015, the tenant was caught stealing money from laundry machines on the second floor. He indicated that the tenant turned the machines upside down and took the coins. The landlord read aloud a statement from a witness, "SW," another tenant in the same rental building, who saw the tenant stealing money. The tenant stated that he heard laundry being done around 3:00 a.m., that he was annoyed and went to check the laundry room on the second floor, that he found the laundry machines knocked over and went to pick them up, and that he took approximately \$20.00 in change from the laundry machines so that no one else would take it. The tenant agreed that SW saw him during this time. The landlord stated that SW called the police and they attended and arrested the tenant, taking him to jail overnight. The tenant agreed with this statement. The landlord indicated that the tenant signed an undertaking and agreed to appear in court on December 4, 2015 to speak to the matter. The tenant agreed with this statement, indicating that was charged with theft under \$500.00 and mischief relating to this incident on October 8, 2015.

The landlord testified that he issued the 1 Month Notice for the above incidents. However, the above incidents occurred after the landlord issued the 1 Month Notice on August 31, 2015. The landlord then confirmed that the tenant committed a number of acts in August 2015. The landlord explained that the tenant damaged a lock box and stole money, kicked a service door in, cut computer service to security cameras and a security door in the building, and cut internet service to the building. The landlord stated that he had no proof that the tenant committed the above acts and that he called the police and they were unable to file charges because no one witnessed the tenant committing these acts. The tenant denied all of the above allegations.

## Analysis

While I have turned my mind to all of the documentary evidence and the testimony of the parties, 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 date the tenant received the notice. The tenant received the 1 Month Notice on August 31, 2015, and filed his Application on September 8, 2015. Therefore, 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.

On a balance of probabilities and for the reasons stated below, I find that the landlord did not provide sufficient documentary or testimonial evidence to show that the tenant or other occupants permitted on the property by the tenant significantly interfered with or unreasonably disturbed, seriously jeopardized the health, safety or lawful rights, or engaged in illegal activity that adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord. When the landlord issued the 1 Month Notice in August 2015, the incident on October 8, 2015, had not yet occurred. At the time the notice was issued in August 2015, the landlord and the police agreed that the landlord had no proof that the tenant engaged in any of the actions described. The tenant denied these actions. The landlord also agreed that he had no proof that the tenant engaged in the laundry room actions that occurred two to three weeks before October 8, 2015. The tenant denied these actions. Although the tenant admitted his actions on October 8, 2015, this was more than one month after the 1 Month Notice was issued and was not the reason for issuing the notice in the first place.

I find that the landlord failed to prove that he had sufficient grounds to issue the 1 Month Notice at the time that he did on August 31, 2015. Therefore, I allow the tenant's application to cancel the landlord's 1 Month Notice, dated August 31, 2015. The landlord's verbal request for an order of possession for cause is denied. The landlord's 1 Month Notice, dated August 31, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the Act.

## Conclusion

The tenant's application to cancel the landlord's 1 Month Notice, dated August 31, 2015, is allowed. The landlord's verbal request for an order of possession for cause is denied.

The landlord's 1 Month Notice, dated August 31, 2015, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The tenant's application for "other" unspecified relief is dismissed, as he provided no evidence regarding this portion of his claim at this hearing.

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 16, 2015

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Residential Tenancy Branch