



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order cancelling a notice to end the tenancy for cause.

The tenant and the landlord attended the hearing, however prior to the conclusion of the hearing, the landlord exited the conference call.

### Issue(s) to be Decided

Has the landlord established that the notice to end the tenancy given to the tenant was issued in accordance with the *Residential Tenancy Act*?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on May 1, 2015, however the tenant moved in early, and still resides in the rental unit. Although no written tenancy agreement exists, rent in the amount of \$650.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$325.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a bachelor suite, known as a carriage house which is situated above the landlord's garage.

The landlord further testified that the tenant was personally served by the landlord with a 1 Month Notice to End Tenancy for Cause (the notice) on October 1, 2015. A copy has been provided and it is dated September 26, 2015 and contains an effective date of vacancy of October 31, 2015. The reasons for issuing it are:

- 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;
- put the landlord's property at significant risk.

The landlord testified that by not locking the rental unit, the landlord's furniture, linens and other belongings are at risk. A lock is to protect what's inside and the tenant has a key. Sometimes the door has been left wide open all night.

The tenant was permitted to park his scooter in the garage below the rental unit, but used the garage for some other purpose. The landlord returned from out of town and found a pail of ice-salt dumped in the garage and 2 big serving spoons in it. The tenant told the landlord he spilled it but took the pail for his tools. The landlord asked the tenant to put it back and he did.

The landlord also testified that there are children in and out of the rental unit and the landlord's home. The landlord did not know the rental unit would be occupied by the tenant and his child, and did not give a blanket policy for the tenant to take over.

The tenant has also removed a screen from a window and has not put it back as requested, and sometimes the tenant's daughter keeps the landlord's cat over night without telling the landlord.

The landlord abruptly exited the call without allowing for further questioning by me or by the tenant, and prior to hearing from the tenant and the tenant's witness.

### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reasons for issuing it. I find that the landlord's testimony alone does not establish the reasons for issuing it. The landlord chose to end the hearing by abruptly exiting without allowing the hearing to conclude. Therefore, I find that the landlord has failed to establish that the notice was issued in accordance with the *Residential Tenancy Act*, and I hereby cancel it.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee. I hereby grant a monetary order in favour of the tenant in that amount, and the tenant may deduct that amount from future rent payable to the landlord, or may otherwise recover it.

Conclusion

For the reasons set out above, the 1 Month Notice to End Tenancy for Cause dated September 26, 2015 is hereby cancelled and the tenancy continues.

I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$50.00. The tenant may reduce rent for a future month by \$50.00 or may otherwise recover it.

These orders are final and binding and may be enforced.

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: December 15, 2015

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Residential Tenancy Branch

