



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Garab Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes MT, CNC, O

### Introduction

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

The hearing did not conclude on the first scheduled date and was adjourned for a continuation of testimony. The tenant attended the hearing on both scheduled dates with a Legal Advocate. The named landlord also attended on both dates and represented the landlord company. The tenant gave affirmed testimony and called 3 witnesses who gave affirmed testimony. The landlord also gave affirmed testimony and called 1 witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses respecting the testimony and evidence provided, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

- Should the tenant be permitted more time than prescribed to dispute a notice to end the tenancy given by the landlord?
- Has the landlord established that the notice to end the tenancy was given in accordance with the *Residential Tenancy Act*, and more specifically with respect to the reasons for issuing it?

### Background and Evidence

**The landlord** testified that this month-to-month tenancy began on December 1, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$550.00 per month is payable on the 1<sup>st</sup> day of each month, and there are no rental arrears, with the exception of this month. On October 27, 2014 the landlord collected a security deposit from the tenant in the amount of \$275.00 which is still held in trust by the landlord, and no pet damage deposit was collected. A

copy of the tenancy agreement has been provided. The rental unit is one of 58 units in a town-house type of complex.

On October 19, 2015 the landlord personally served the tenant with a 1 Month Notice to End Tenancy for Cause (the notice), a copy of which has been provided. The notice is dated October 19, 2015 and contains an effective date of vacancy of November 30, 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;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord further testified that the tenant had told a neighbouring tenant that he was using the newly renovated rental unit as a garage and wouldn't let anyone in. When the landlord spoke to the tenant about it, the tenant said that it was just a joke, but still would not allow the landlord inside to see. The landlord served the tenant with a notice to inspect in a letter dated October 14, 2015, a copy of which has been provided. When the landlord returned the following day to conduct the inspection, the tenant wouldn't allow entry. Then the tenant sent a text message to the landlord apologizing for being rude and stating that he had just been released from hospital. The landlord replied with another letter on October 17, 2015, which was personally handed to the tenant that date, scheduling the inspection for October 19, 2015. When the landlord arrived on October 19, the tenant was sitting outside of the rental unit smoking. The landlord asked to inspect and again the tenant refused entry. The landlord had the notice to end the tenancy already prepared and served it with 3 witnesses present. No further opportunity was provided to the tenant to reschedule the inspection.

The tenant has not allowed entry even when provided with written notice as required by the *Act*. The landlord does not know the state of the rental unit inside, and a jerry can sits outside the rental unit. The tenancy agreement provides for the landlord's entry provided that at least 24 hours notice in writing is provided to the tenant, and the landlord testified that it is a material term of the tenancy agreement.

The landlord orally requested an Order of Possession.

**The landlord's witness** testified that she is the landlord's daughter and works for the landlord. The witness was present when the notice to end the tenancy was given to the tenant; the witness was holding it until the tenant refused to allow an inspection, then the witness handed it to the landlord to give to the tenant. The landlord asked the tenant to sign the Proof of Service document, but the tenant said he would not. The notice to inspect was scheduled for 9:00 a.m. on October 19, 2015 but the landlord and the witness were late due to another commitment, arriving at the rental unit about 9:30 a.m.

The witness also testified that the tenant had previously asked about giving notice to vacate saying that he had made an offer to purchase another property. Then a neighbouring tenant was interested in moving into the tenant's rental unit and wanted to see it, but the tenant told the neighbouring tenant that it looked like a garage and he'd rather not have anyone go in it. The tenant was not given an opportunity to re-schedule the inspection because it was the second time notice to inspect had been given.

The witness also picked up a jerry can that was outside the rental unit and it was half full.

**The tenant** testified that he owns 2 cars and when he gets gas, he usually has the jerry can in the trunk and fills it for the other car. The jerry can was never in the apartment and is not stored with gas in it, nor are there any other flammables.

The tenant's mother had passed away and a friend 12 days later. The tenant had some of his mother's belongings behind the door of his apartment. The tenant made an offer on another property and sent the landlord a text message asking if he had to give written notice to vacate if the deal went through. Assuming the rental unit would become available, a neighbouring tenant wanted to see it, and as a joke, the tenant said that it looked like a garage. It was taken out of context; the items were not garage items, such as motors or batteries, but boxes.

The tenant had been hospitalized and wasn't allowed to leave until someone picked him up. The tenant stayed at his ex-spouse's home, was there on October 19, 2015, and when he returned home, the 1 Month Notice to End Tenancy for Cause was in the tenant's door. The tenant cannot confirm the date, however the landlord was at the rental unit and the parties discussed things. At that time, the tenant told the landlord that he had a lot of stuff in the rental unit, and the landlord had a letter in her hand.

The tenant also asked the landlord to give the tenant more time to deal with his mother's belongings in a text message, a copy of which has been provided by the landlord.

The tenant apologized to the landlord, and is prepared to agree to whatever, and the landlord can enter the rental unit any time. The situation was overwhelming and the tenant couldn't handle it on his own and just wanted to get things under control.

**The tenant's first witness** (SC) testified that she is an Acute Care Social Worker and around mid to the end of September, 2015 the tenant was admitted into the hospital through emergency for chest pains and gastro intestinal bleeding, and was very unwell at the time. He left the hospital and then was called back due to a significant risk of death. The tenant ended up in intensive care for a week or 2 and again was very unwell. The tenant was seeing a couple of specialists and was discharged back into the community on October 7 or 8, 2015. His condition required significant care and he was going to stay with his ex-spouse.

**The tenant's second witness** (KH) testified that she is a cleaner, and has been doing so for 20 years or more, and currently cleans for the tenant's ex-spouse. The tenant had been released from hospital and stayed at the ex-spouse's home and the witness got to know him. The witness was inside the tenant's apartment this week and helped the tenant remove some items from it. The witness did not see any flammable materials, other than cleaning supplies under the sink that one would find in any home, and did not see anything out of the ordinary that would risk health or safety.

**The tenant's third witness** (JC) testified that she is the tenant's ex-spouse and has known the tenant for 32 years. The tenant had been very sick and the landlord had called the witness when an ambulance had just left with the tenant. The landlord thought the tenant was drunk, but the tenant had lost a lot of blood, and was hospitalized. Once released, the tenant could not be by himself, or feed himself, and was too weak to walk. On October 7 or 8, 2015 the witness picked up the tenant from hospital and took care of him at her home for about 3 weeks or a month. The witness also went with the tenant to check on the tenant's rental unit and a piece of paper or a letter was on the door. The tenant went in to check things, and he and the witness went back to the witness' house. The paper retrieved was from the landlord; something about being evicted.

The witness also testified that she has been inside the tenant's rental unit many times. It does not look like a garage inside and the witness has not observed any flammables inside or a jerry can outside.

#### Closing Submissions

**The landlord** submits that the tenant refused the landlord entry to inspect on 2 occasions after being given written notice. The tenant was served with the 1 Month Notice to End Tenancy for Cause on October 19, 2015 personally and did not dispute the notice within the 10 days as required by the *Act*.

**The tenant's Legal Advocate** submits that the tenant was served with the 1 Month Notice to End Tenancy for Cause on October 29, 2015 and filed the application for dispute resolution disputing the notice on November 2, 2015. The Legal Advocate checked the box on the application illustrating that the tenant seeks more time to dispute the notice out of due diligence. When the tenant met with the Legal Advocate, the tenant was still ill and anxious. The tenant has had substantial extenuating circumstances. The tenant experienced multiple deaths and serious health concerns and it could have taken several months to get well and he required significant care.

### Analysis

Firstly, with respect to disputing the 1 Month Notice to End Tenancy for Cause within the time prescribed by the *Act*, the landlord and the landlord's witness both testified that the tenant was served personally on October 19, 2015, and the landlord has provided Proof of Service documents signed by 3 witnesses. The tenant testified that he was served on October 29, 2015. I find that the tenant had an illness that was serious enough to cause some confusion with respect to dates. However, the tenant's advocate has applied on behalf of the tenant for more time to dispute the notice out of due diligence. The *Act* states that if the tenant does not dispute such a notice within 10 days of service, the tenant is conclusively presumed to have accepted the end of the tenancy, and therefore, extending a time limit can only be done in extenuating circumstances. In this case, I accept that the notice was served on October 19, 2015, and I also find that extenuating circumstances did exist, and I grant the tenant more time to dispute the notice.

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 reason(s) for issuing it. In this case, I have reviewed the notice and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

With respect to the first 2 reasons:

- 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;

I am not satisfied that the landlord has established either. Neither the landlord, nor the landlord's daughter, nor the neighbouring tenant went inside the rental unit to see that it may have been kept with motors or batteries or some other unsafe items. The landlord relies on the word of the neighbouring tenant who advised that the tenant said it looked like a garage. The tenant told the landlord it was a joke, and I find it equally believable that it was meant to describe boxes of items belonging to the tenant's late mother.

With respect to the third reason for issuing the notice to end the tenancy:

- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so,

the onus is on the landlord to establish both; that the tenant breached a material term, and that the tenant didn't correct that breach within a reasonable time after written notice from the landlord.

The tenancy agreement signed by both parties on October 27, 2014 clearly states that the landlord may inspect the rental unit if the landlord gives the tenant a written notice at least 24 hours and not more than 30 days before the entry, and the notice must state the purpose for entering, which must be reasonable, and the date and the time of the entry. It is well spelled out in the tenancy agreement, and I accept that it is a material term of the tenancy agreement.

I have reviewed the documentation provided by the parties and in particular the letter of the landlord dated October 14, 2015 stating that an inspection of the rental unit will take place on October 15, 2015 at 9:00 a.m. However, there is no evidence before me of how that notice was given to the tenant. If the notice was served by posting it to the door of the rental unit, it would be deemed to have been served 3 days later. The landlord testified that she attended the rental unit on October 15, 2015 and the tenant refused entry. A copy of a text message corroborates the landlord's testimony that the tenant apologized, and it is dated October 16, 2015. The message also sets out reasons for his refusal or behaviour, and requests till the end of the month to get things sorted out.

The landlord testified that the letter to the tenant dated October 17, 2015 scheduling an inspection for October 19, 2015 at 9:00 a.m. was given to the tenant personally on October 17, 2015. The landlord and the landlord's witness both testified that they arrived at the rental unit on October 19, 2015, albeit late, and again were refused entry.

There is no dispute that the tenant had been very ill and I am satisfied that he was confused and overwhelmed by his illness, recovery from surgery, and the boxes in his rental unit that he had to deal with. He testified that it was overwhelming and he couldn't handle it on his own. The landlord and the landlord's witness both testified that they did not attempt to find an agreeable date to schedule the inspection. I find that the landlord was unreasonably impatient and over-reacted to a rumour. I also find that the landlord did not provide the tenant with a reasonable time after written notice to correct the breach, and the landlord has not attempted to inspect even when given an open opportunity to do so by the tenant.

The notice to end the tenancy is cancelled and the tenancy continues.

I order the tenant to comply with the *Act* and the tenancy agreement by allowing the landlord entry into the rental unit to inspect after being given written notice by the landlord to do so. If the landlord serves the notice in accordance with the *Act*, the tenant cannot refuse the landlord entry, and the landlord may enter without permission from the tenant.

### Conclusion

For the reasons set out above, the tenant's application for more time to dispute the notice to end the tenancy is allowed.

The landlord's request for an Order of Possession is denied.

The 1 Month Notice to End Tenancy for Cause dated October 19, 2015 is hereby cancelled and the tenancy continues.

I hereby order the tenant to comply with the *Residential Tenancy Act* and the tenancy agreement by allowing the landlord entry into the rental unit to inspect after being given written notice pursuant to the *Act* by the landlord to do so.

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: January 15, 2016

---

Residential Tenancy Branch

