



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPB, OPC

### Introduction

This hearing was convened in response to applications by the landlord and the tenant.

The landlord's application is seeking orders as follows:

1. For an order of possession; and
2. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. To cancel a 1 Month Notice to End Tenancy for Cause,(the "Notice"); and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a notice for cause Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice be cancelled or should the landlord be entitled to an order of possession?

### Background and Evidence

The parties agree that a Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on January 31, 2016.

The reason stated in the Notice was that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- engaged in illegal activity that has or is likely to
  - damage the landlord's property,
  - adversely affect the quiet enjoyment, security, safety and physical well-being of another occupant or the landlord; and
- tenant has not done required repairs of damage to the unit.

The landlord testified that they wish to end the tenancy. The reasons are that the tenant's yard is very untidy, the tenant is using area A and B of the property that are not part of their tenancy agreement and that the tenant has obtained roasters and chickens that they did not have permission to obtain.

The landlord testified that the tenant was instructed to remove their belongings from area A. The landlord stated the tenant initially removed those belongings, but tenant has again started to use area A again.

The landlord testified that initially there was a discussion with the tenant that they could have a small tree farm on the rental property. The landlord stated that if the tenant's business was successful they might be able to lease area B. The landlord stated that the tenant's tree farm has not successful; however, the tenant has taken over area B without their consent.

The landlord testified that the tenant also has a truck on the property that is too close to the gate and it makes it difficult for the farm equipment. The landlord stated they need approximately eight clear feet.

The landlord testified that the tenant's yard is also untidy as they are plastic pots, a bathtub, and other items that make it unsightly. Filed in evidence are photographs

The landlord testified that the tenant is also in violation of the tenancy agreement as they obtained roasters and chickens without their consent and the tenancy agreement states no pets without written permission of the landlord.

The tenant testified that they have from time to time had personal items in area A.

The tenant testified that during the tenancy area B was discussed that it could be used for a tree farm. The tenant confirmed area B was not part of the original tenancy agreement and no additional rent was agreed too.

The tenant testified that the truck does not interfere with the farm equipment and is about 6 feet from the gate. The tenant stated that they do not have any problems with locating the truck to a different area if needed.

The tenant testified that when the tenancy commenced in 2012, the female landlord gave them permission to have chickens. The tenant stated that in the last six months they have obtained two roasters and 20 chickens. The tenant stated that the chickens are not pets as they are livestock and the bylaw allows them to have them.

The female landlord testified that they did not give the tenant permission to have chickens at the start of the tenancy. The landlord stated that when they were walking around the property they informed the tenant that it once was a chicken farm in 1970.

### Analysis

Based on the above, the testimony, and evidence, on a balance of probabilities, I find as follows:

After considering all of the written and oral submissions submitted at this hearing, I find that the landlord has not provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- engaged in illegal activity that has or is likely to
  - damage the landlord's property,
  - adversely affect the quiet enjoyment, security, safety and physical well-being of another occupant or the landlord; and
- tenant has not done required repairs of damage to the unit.

In this case although the landlord believes the tenant's property is untidy and there is some merit to that statement based on the photographs. However, I find that does support any of the reasons stated in the Notice. There was no evidence of the tenant significantly interfering with or unreasonably disturbed another occupant or the landlord, such as ongoing unreasonable noise. There was no evidence of any illegal activity, such as using the premises to contravene any statute of law and there was no evidence of any damage that was caused by the tenant, such as breaking a window.

Further, although I accept the tenant has been using area A or B, without the consent of the landlord it also does not support the reasons stated in the Notice. Further, area A and B are not part of the tenancy agreement.

However, I find it appropriate to **Order that the tenant to remove all their personal property for both of area A and B, no later March 15, 2016**, and not use either areas unless they have the written consent of the landlord to do so. Further, If the tenant fails to remove their items from these two areas those items can be considered abandoned.

Although the truck is parked near the gate, there was no evidence that the truck significantly interfered with the landlord conducting business. The tenant has agreed to move the truck to another location. The tenant is to ensure that there is an eight foot clearance to allow farm equipment to pass safely.

I have reviewed the tenancy agreement. Although the fixed term has expired, I find the tenancy automatically reverted to a month-to-month tenancy thereafter and the terms of the tenancy agreement continue.

The addendum to the tenancy agreement indicated pets are not allowed, I find it would also be reasonable to include livestock, as livestock have a greater impact on the property.

In this case, the tenant has been obtaining chickens and roasters over the last six months. Although I accept chickens are permitted under the municipal bylaw, that it not an issue for me to consider.

The issue I must determine is whether the tenant has violated the tenancy agreement. In this case the agreement indicates that the tenant is permitted one small lap dog on a trial basis, I find if the tenant has permission at the start of the tenancy to have chickens I would be reasonable that it would be included in the agreement, which it is not.

I find the tenant has failed to prove that they had the prior permission of the landlord to obtain the 2 roasters and the 20 chickens. Therefore, I find the tenant has breached the terms of the tenancy agreement.

However, as a breach of a material term was not the reason stated in the Notice, I find obtaining chickens does not support the reasons stated in the Notice.

However, I find it appropriate to **Order that the tenant must have the roasters and chickens removed from the property, no later than March 31, 2016**. Should the tenant failed to comply with my Order the landlord is entitled to issue a new 1 Month Notice to End Tenancy for Cause, for non-compliance with an order under the legislation

In light of the above finding, I find the Notice was not issued for the reasons stated. Therefore, I grant the tenant's application to cancel the Notice issued on December 23, 2015. The landlord's application is dismissed. As both parties had paid a filing fee, I decline to award the recovery of the fee to either party.

Conclusion

The landlord's application for an order of possession is dismissed. The tenant's application to cancel the Notice is granted. I decline to award the filing fee to either party.

The tenant must comply with my above Orders.

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: February 11, 2016

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Residential Tenancy Branch

