



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, MT, RP

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied:

- to set aside a Notice to End Tenancy for Cause;
- for more time to apply to set aside a Notice to End Tenancy for Cause; and monetary Order for money owed or compensation for damage or loss
- for an Order requiring the Landlord to make repairs.

The Tenant stated that on January 07, 2016 the Application for Dispute Resolution and the Notice of Hearing were sent to the Landlord, via registered mail. The Landlord acknowledged receipt of these documents.

On January 25, 2016 the Landlord submitted six pages of evidence to the Residential Tenancy Branch. The Landlord stated that this evidence was personally served to the Tenant by another occupant of the residential complex on January 28, 2016. The Tenant stated that he received this evidence from the other occupant on February 01, 2016 or February 02, 2016 and it was accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

Should the Tenant be granted more time to cancel a Notice to End Tenancy?

Is there a need to issue an Order requiring the Landlord to make repairs to the rental unit?

### Background and Evidence

The Tenant and the Landlord agree that:

- this tenancy began on March 01, 2015;
- rent was due by the first day of each month;
- on November 30, 2015 the Tenant was personally served with the One Month Notice to End Tenancy for Cause that is the subject of this dispute;
- the Notice to End Tenancy declared that the Tenant must vacate by December 31, 2015; and
- the Tenant is still living in the rental unit.

The Tenant stated that he filed an Application for Dispute Resolution to dispute the One Month Notice to End Tenancy on December 21, 2015. This is more than ten days after he received the Notice to End Tenancy. The Tenant applied for more time to apply to cancel the One Month Notice to End Tenancy that he received on November 30, 2015.

In support of his application for more time to apply to cancel the One Month Notice to End Tenancy the Tenant stated that:

- after the One Month Notice to End Tenancy was received the Landlord told his sister and the Witness that the tenancy would continue;
- sometime in early December of 2015 his sister and the Witness told him that his tenancy would continue;
- he did not apply to dispute the Notice to End Tenancy prior to December 22, 2015 because he had been told by his sister and his friend that the Landlord was willing to continue the tenancy;
- he is fairly certain that the Witness first contacted the Landlord on behalf of the Tenant on December 05, 2015, via text message;
- his sister and the Witness were acting as his agent in this matter;
- on December 11, 2015 the Landlord told the Tenant, via text message, that the tenancy would continue;
- on December 15, 2015 the Tenant thanked the Landlord for agreeing to continue the tenancy, via text message;
- on December 15, 2015 the Landlord informed the Tenant, via text message, that he wanted the Tenant to vacate the unit; and
- the Landlord did not tell him he had found a new tenant for the unit until sometime in January of 2016.

In response to the application for more time to apply to cancel the One Month Notice to End Tenancy the Landlord stated that:

- he never told the Tenant that he would be willing to continue the tenancy;
- on December 21, 2015 he told the Tenant he had located a new tenant for the unit, who wished to move into the unit on January 01, 2016;
- the Witness first contacted him on behalf of the Tenant on December 13, 2015, via text message;

- the Witness for the Tenant approached him on several occasions in an effort to convince him to continue the tenancy; and
- he never told the Witness or the Tenant's sister that he would be willing to continue the tenancy.

The Tenant asked that the one of the witnesses named in the Landlord's written submission be called as a witness.

The Witness stated that:

- he spoke with the Landlord on several occasions about the possibility of continuing with the Tenant's tenancy;
- he first spoke with the Landlord about the Notice to End Tenancy that had been served, via text message, on December 10, 2015 or December 12, 2015;
- when he first spoke with the Landlord it was clear to him that the Landlord wanted the tenancy to end;
- he was under the impression that by the middle of December the Landlord had changed his mind about ending the tenancy;
- the Landlord did not specifically tell him that he would allow the Tenant to continue living in the rental unit; and
- the Landlord did not specifically ask him to tell the Tenant that the tenancy would continue.

The Tenant asked the Witness if it was possible that he first contacted the Landlord about withdrawing the Notice to End Tenancy sometime prior to December 10, 2015 and the Witness acknowledged that it was possible.

After considering all of the evidence submitted regarding the application for more time to apply to cancel the One Month Notice to End Tenancy the parties were advised that the application was being denied.

Section 66(1) of the *Act* authorizes me to extend the time limit for setting aside a Notice to End Tenancy only in exceptional circumstances. The word "exceptional" means that I am unable to extend this time limit for ordinary reasons. The word "exceptional" implies that the reason for failing to meet the legislated time lines is very strong and compelling. A typical example of an exceptional reason for not complying with the timelines established by legislation would be that the Tenant was hospitalized for an extended period after receiving the Notice.

In these circumstances I was not satisfied that the Landlord informed either the Tenant or anyone acting on behalf of the Tenant that he would withdraw the Notice to End Tenancy or that he would allow the tenancy to continue. I therefore could not conclude that there were exceptional circumstances that prevented the Tenant from disputing the Notice to End Tenancy within ten days of receiving it.

I was not satisfied that the Landlord informed either the Tenant or anyone acting on

behalf of the Tenant that he would allow the tenancy to continue, in part, because the Landlord testified that he did not tell the Tenant, the Tenant's sister, or the witness that he would continue the tenancy.

I was not satisfied that the Landlord informed either the Tenant or anyone acting on behalf of the Tenant that he would allow the tenancy to continue, in part, because the Witness acknowledged that the Landlord did not specifically agree to continue the tenancy and he did not ask the Witness to tell the Tenant that the tenancy would continue. In my view, the Witness's perception that the Landlord agreed to continue the tenancy is simply not sufficient.

I was not satisfied that the Landlord informed either the Tenant or anyone acting on behalf of the Tenant that he would allow the tenancy to continue, in part, because there was no documentary evidence submitted that would support the Tenant's submission that the Landlord agreed to continue the tenancy, via text message.

The Landlord and the Tenant were advised that since I intended to dismiss the Tenant's application for more time to apply to cancel the One Month Notice to End Tenancy, the tenancy would end in accordance with the One Month Notice to End Tenancy. This decision was based on section 47(5) of the *Act* which stipulates that tenants are conclusively presumed to have accepted that the tenancy ends on the effective date of a notice received pursuant to section 47 of the *Act* and that the tenants must vacate the rental unit by that date unless the tenant disputes the notice within ten days of receiving it.

Upon being advised that the tenancy would end in accordance with the One Month Notice to End Tenancy the Landlord and the Tenant mutually agreed to settle the issues in dispute in this Application for Dispute Resolution under the following terms:

- the tenancy will end, by mutual consent, on February 29, 2016 providing the Tenant pays \$1,500.00 to the Landlord by the end of the day on February 10, 2016;
- in the event the Tenant does not pay \$1,500.00 to the Landlord by the end of the day on February 10, 2016, the tenancy will end two days after an Order of Possession is served upon the Tenant; and
- the Landlord will receive an Order of Possession that cannot be served until February 27, 2016 unless the Tenant does not pay \$1,500.00 to the Landlord by the end of the day on February 10, 2016, in which case it can be served any time after February 10, 2016.

### Analysis

The parties have settled this dispute under the aforementioned terms.

### Conclusion

On the basis of the settlement agreement reached by the parties, I grant the Landlord an Order of Possession that is effective two days after it is served upon the Tenant. This Order cannot be served until February 27, 2016 unless the Tenant does not pay \$1,500.00 to the Landlord by the end of the day on February 10, 2016, in which case it can be served any time after February 10, 2016.

This settlement agreement is recorded 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 10, 2016

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Residential Tenancy Branch

