



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KSAN SOCIETY HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

CNC

### Preliminary Issues

Section 1 of the Act defines a landlord in relation to a rental unit, to include the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord permits occupation of the rental unit under a tenancy agreement, or exercises powers and performs duties under this Act, the tenancy agreement or a service agreement.

Upon review of the documentary evidence and the 1 Month Notice to end tenancy the Landlord's name was listed as a corporate housing society.

Although the Respondent named on the Tenant's Application is an Agent for the corporate Landlord who meets the definition of a Landlord, it is the policy of the Residential Tenancy Branch to include the Landlord's corporate name in the style of cause of a Decision in cases where the Agent is an employee of the corporate Landlord. Accordingly, the style of cause has been amended to include the Landlord's corporate name, pursuant to section 64(3)(c) of the Act.

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on January 18, 2016. The Tenant filed seeking to cancel a 1 Month Notice to end tenancy for cause.

The hearing was conducted via teleconference and was attended by the Landlord, the Tenant, and the Tenant's Advocate. I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed.

Each person gave affirmed testimony that they served the Residential Tenancy Branch (RTB) with copies of the same documents they served each other. The Landlord acknowledged receipt of the Tenant's evidence; however, the Tenant testified he had not received the Landlord's four pages of evidence.

The Landlord testified they served their evidence to the Tenant via regular mail. She was not able to provide evidence as to the date that evidence was mailed or proof that it was received. Therefore, in the presence of the Tenant's disputed verbal testimony that he did not receive the Landlord's evidence, I find there was insufficient evidence to prove the Tenant was served with the Landlord's evidence. Accordingly, the Landlord's documentary evidence will not be considered in this proceeding. I did however consider the Landlord's oral testimony as evidence.

During the hearing each party was given the opportunity to provide their evidence orally, respond to each other's testimony, and to provide closing remarks. Following is a summary of the submissions and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued January 8, 2016 be upheld or cancelled?
2. If cancelled, is the Landlord entitled to an Order of Possession?

Background and Evidence

The parties entered into a month to month tenancy which began on November 1, 2013. Rent of \$375.00 was payable on the first of each month. On or around November 1, 2013 the Tenant paid \$187.50 as the security deposit. The rental unit was described as being a self-contained apartment located in a building with 10 other rental unit apartments.

On January 8, 2016 the Tenant was served a 1 Month Notice to end tenancy for cause (the 1 Month Notice) when it was posted to his door. The 1 Month Notice was issued pursuant to Section 47(1) of the Act listing an effective date of January 31, 2016 for the following reasons:

- Tenant has allowed an unreasonable number of occupants in the unit/site
- 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
  - Put the Landlord's property at significant risk

The Landlord testified that at the time they rented the unit to the Tenant he was doing well with managing his sobriety. Then in the early fall of 2015 she said the Tenant began drinking again and they issued him an eviction notice at that time. The Landlord submitted the Tenant ended up in the hospital shortly afterwards and he pleaded with the Landlord not to evict him as he assured her he would seek assistance and work hard to get sober again. The Landlord stated they decided to give the Tenant one more chance and withdrew the previous eviction notice.

The Landlord asserted she began to get complaints from other tenants again in December 2015 because the Tenant was partying and fighting again. She said they went and talked with the Tenant and told him he had to keep the noise levels down.

The Landlord testified that when the Tenant continued to drink and disturb the other tenants they offered the Tenant to move into one of their supported housing rooms above the shelter. She stated the supportive housing there provides more support and supervision for people with sobriety issues. Although there was a room available for the Tenant he refused to accept it.

The Landlord argued that the Tenant's behaviour continued to escalate where he was drinking and having parties with people coming and going all day and night. She said she was receiving numerous complaints from tenants about the noise and the Tenant's drunken friends ringing their buzzers asking to be let in so they can go see the Tenant.

The Landlord submitted when the Tenant failed to agree to move to a more supportive housing situation or to take action to get sober again they served him with the 1 Month Notice and are seeking to have the Tenant evicted. She argued the Tenant has continued to party and constantly having friends over even after she served the 1 Month Notice. She said she even received complaints in the early morning hours on the Saturday two days before this hearing.

The Tenant testified and confirmed that he is an alcoholic and has been drinking again. He said he did not see any problem with having his friends over to listen to music. He argued the people in the building like him and they are his friends. He asserted that his neighbours have asked him to leave his door open so they could listen to his music.

The Tenant argued he has never been issued a warning letter and he denied being served a previous notice to end tenancy. He stated he is trying to fix things and has an appointment with a counselor on March 7, 2016. He said he realizes he has put his housing at risk and argued it was tough to defend him when he has slipped up. He requested that he not be evicted.

In closing, the Landlord confirmed she had issued the Tenant a previous notice and had several conversations with the Tenant about getting sober and he simply has taken no action to get sober again, despite being offered assistance. She asserted she has to provide a quiet and safe place for her other tenants in the building so they are wishing to proceed with the eviction for as soon as possible. She confirmed the Ministry mailed the March 2016 rent cheque directly to their office which has not been cashed. She stated their bookkeeper is holding onto the cheque and will return it to the Ministry if they are issued an Order of Possession.

#### Analysis

After careful consideration of the foregoing and on a balance of probabilities I find as follows:

#### Regarding Effective Dates of a Notice to End Tenancy

Section 53(1) of the Act stipulates that incorrect effective dates are automatically changed if a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

Section 53(3) of the Act states in the case of a notice to end a tenancy, other than a notice under section 45 (3) *[tenant's notice: landlord breach of material term]*, 46 *[landlord's notice: non-payment of rent]* or 50 *[tenant may end tenancy early]*, if the effective date stated in the notice is any day other than the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement, the effective date is deemed to be the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement

- (a) that complies with the required notice period, or
- (b) if the landlord gives a longer notice period, that complies with that longer notice period.

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be issued on the prescribed form and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

In this case rent was payable on or before the first of each month; therefore, if a Notice to end tenancy is issued on the eighth day of a month the notice would be effective on the last day of the following month, pursuant to section 53 of the *Act*.

The Notice was not completed in accordance with section 53 of the *Act* as it was issued January 8, 2016 with an incorrect effective date of January 31, 2016. Accordingly, the effective date of this Notice automatically corrected to be **February 29, 2016**, pursuant to section 53(3) of the *Act*.

Section 47 of the *Act* provides that a landlord may end a tenancy by giving notice to end the tenancy if specific circumstances apply. Section 47(e) provides for ending a tenancy when the 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; and/or put the Landlord's property at significant risk. Section 47(c) provides for ending a tenancy if a tenant has allowed an unreasonable number of occupants in the unit/site pursuant to section 47(c) of the *Act*.

Where a Notice to End Tenancy comes under dispute, the Landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

In response to the Tenant's argument that he has never been issued a warning letter, section 47(e) of the *Act* does not stipulate that a tenant must be issued a warning letter prior to being evicted. Furthermore, I accept the Landlord's submission that the Tenant had been previously issued a notice to end tenancy which was withdrawn a few months prior to the January 8, 2016.

Notwithstanding the Tenant's submissions that the other tenants are his friends, I accept the undisputed evidence the Tenant has been engaging in drinking, partying, having numerous guests over, and playing loud music at all hours of the day and night which is disturbing the quiet enjoyment of other tenants in the building.

In addition to the foregoing, I further accept the Landlord has attempted to provide the Tenant an option to stay housed where the Tenant could have moved to another location and receive supervision and assistance to get sober again. The Tenant confirmed that he simply refused the offer because he preferred to stay in his current rental unit.

Upon consideration of all the evidence presented to me, I find the Landlord had valid reasons for issuing the Notice. Therefore the 1 Month Notice is upheld pursuant to section 47(e) of the *Act* and the Tenant's application to set aside the Notice is dismissed. As the Notice was upheld pursuant to section 47(e) of the *Act*, there is no need for me to analyze the reason listed regarding the Tenant has allowed an unreasonable number of occupants in the unit/site pursuant to section 47(c) of the *Act*.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

As indicated above, the Tenant's application to dismiss the Notice was dismissed; therefore, the Landlord has been issued an Order of Possession effective **Two (2) Days after service upon the Tenant**, pursuant to section 55(1) of the *Act*. In the event that the Tenant does not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenant's application was dismissed and the Landlord was issued an Order of Possession effective **Two (2) Days** after service upon the Tenant.

This decision is final, legally binding, and 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: March 01, 2016

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Residential Tenancy Branch

