



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF, OPC

### Introduction

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. An order to cancel the one month Notice to End Tenancy dated November 25, 2015
- b. An order that the tenant recover the cost of the filing fee

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. An Order for Possession pursuant to a one month Notice to End Tenancy dated November 25, 2015.
- b. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. The hearing was initially set for February 1, 2016. However, due to technical difficulties of the telephone system it was impossible for the parties to hear each other and I adjourned the matter to the next available date.

Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the one month Notice to End Tenancy was served on the Tenant by posting on November 25, 2015. Further I find that the Application for Dispute Resolution/Notice of Hearing filed by the Tenant was personally served on the landlord on December 9, 2015. I find that the Application for Dispute Resolution filed by the Landlord was served on the Tenant by mailing, by registered mail to where the tenant resides on January 6, 2016. :

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the one month Notice to End Tenancy dated November 25, 2015?
- b. Whether the landlord is entitled to an Order for Possession?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on March 1, 2014 and become month to month after a year. The present rent is \$1133.09 per month payable on the first day of each month. The tenant paid a security deposit of \$550 at the start of the tenancy.

Grounds for Termination:

The grounds relied on in the Notice to End Tenancy are as follows:

- 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

Briefly, the landlord relies on the following:

- The tenant provided a key to another individual described by the tenant as his friend.. That individual on his own in the absence of the tenant gained entry and exit without the landlord being present on several occasions.
- On at least one occasion the security cameras show that friend allowed a 3<sup>rd</sup> party to gain entrance into the building, The third party went to the laundry room. The video cameras show that person throwing a piece of clothing over the camera. The landlord subsequently discovered that the coin laundry had been broken into and the landlord's submit that it is a reasonable inference that the third party broke into the coin laundry machine.
- There is a constant stream of traffic going to and from the tenant's rental unit.

- On cross examination the landlord acknowledged that the police where not called to this incident. The landlord also stated the coin laundry has been broken into on two or three other occasions.
- I do not have any evidence estimating the amount of money stolen or the cost to repair the coin laundry.
- The landlord has not lost a tenant as of yet but has received a number of complaints from other tenants.
- The landlord states the conduct of the Tenant has put the building at significant risk.
- The landlord also introduced letters from repair persons who complained that the tenant was demonstrating a threatening manner. The dispute involved the tenant reacting to the contractor's propping the front and back door open to ventilate the lower hallway.
- The tenant has allowed another person to gain access in a similar way.

The tenant testified as follows:

- The person seen in the security cameras was a friend who visited him often during this time. However, he returned to Manitoba several months ago and is not likely to return as he was unsuccessful in obtaining a job.
- The person did not live with him.
- At the time he lent his to key his friend to allow him the ability to re-enter as the tenant wanted to have a smoke and smoking is not permitted in the rental unit.
- The tenant never went in or out as he does not smoke.
- He never met the third party seen in the video.

#### Tenant's Application:

After carefully considering all of the evidence I made the following determinations:

- There is insufficient evidence on which I can determine that the friend or third party was living in the rental unit. As a result I determined the landlord failed to prove that the tenant has allowed an unreasonable number of occupants into the rental unit.
- One can understand the security concerns of the landlord. However, based on the evidence presented this is not a situation where the tenant has cut another key without the consent of the landlord. Rather, the best evidence suggests this is a case where the tenant has lent his key to his friend for entrance from the outdoors after he has had a smoke while the tenant is still in his rental unit.
- I determined the landlord failed to prove that the tenant has significantly interfered with or unreasonably disturbed another occupant. There is insufficient evidence from other occupants to support this ground.

- The landlord submits that it is a reasonable inference that the friend permitted the third party entered into the rental property and cause damage to the coin laundromat and the theft of coins. However, the police were not called. There is no evidence as to the cost of repairing it. The evidence supporting this is insufficient.
- The tenant's explanation that he gave the key to his friend to allow him entrance after having a smoke outdoors in my view does not amounts to seriously jeopardizing the health or safety or lawful right of another occupant or the landlord. The landlord failed to prove that the actions of the tenant have put the landlord's property at significant risk.
- Had there been evidence tenant illegally duplicated the key or gave a second key to a third party to use when the tenant is not present, the result might had been different.

As a result I ordered that the one month Notice to End Tenancy dated November 25, 2015 be cancelled. The tenancy shall continue with the rights and obligations of the parties remaining unchanged. As the tenant has been successful with this application I order that the landlord pay to the tenant the cost of the filing fee in the sum of \$50 such sum may be deducted from future rent.

Landlord's Application - Analysis - Order of Possession:

As the Notice to End Tenancy has been cancelled I dismissed the landlord's application for an Order for Possession.

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.

March 24, 2016

---

Residential Tenancy Branch

