



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PR LOTUS HOTEL LIMITED PARTNERSHIP  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Preliminary matters

The Tenant's advocate requested the Landlord's digital evidence be excluded from the hearing as the Tenant did not receive the flash drive in his evidence package. The Landlord said the Tenant watch the video of the Tenant removing a hammer from a room in the rental complex with the Landlord. As well the Landlord said the Tenant said he did not have the equipment to watch the video so the Landlord did not have to send it to him. The Tenant said he did watch the video with the Landlord but he did not tell the Landlord not to send it to him. The Tenants advocate requested the digital evidence not be permitted into the hearing.

The Arbitrator said that as the Tenant has viewed the digital evidence and is full aware of it content the flash drive is admissible as evidence to the hearing.

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy.

The Tenant said he served the Landlord with the Application and Notice of Hearing (the "hearing package") by registered mail on February 29, 2016. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

### Issues(s) to be Decided

1. Is the Tenant entitled to an Order to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started on September 1, 2006 as a month to month tenancy. Rent is \$497.00 per month payable in advance of the 1<sup>st</sup> day of each month. The Tenant paid a security deposit of \$215.00 at the start of the tenancy.

The Landlord said he served the Tenant with a 1 Month Notice to End Tenancy for Cause dated February 9, 2016 by personal delivery on February 9, 2016. The Effective Vacancy Date on the Notice is March 31, 2016. The Tenant is living in the unit and the Landlord said he wants to end the tenancy. The Tenant said the 1 Month Notice to End Tenancy was posted on his door and he did not receive it until February 12, 2016.

The Landlord said the reasons on the 1 Month Notice to End Tenancy are that the Tenant has put the landlord property at significant risk and the Tenant has engaged in illegal activities that have jeopardized the lawful rights or interest of the landlord and other occupants.

The Landlord said there were many incidents that lead to the issuing of the 1 Month Notice to End Tenancy, but he has only submitted evidence for one incident. The Landlord said they have just installed surveillance camera in the rental complex as there has been a number of thefts specifically tools in the areas where the Landlord has been renovating the rental complex. The Landlord said the Tenant is caught on camera stealing a hammer from a room that is being renovated. The Landlord said they have lost thousands of dollars in tools and he believes the Tenant has been stealing the tools and selling them on the street. The Landlord said they have spent \$10,000.00 to install the surveillance cameras and they have caught the Tenant on camera stealing a hammer. The Landlord requested an end to the tenancy.

The Tenant said the room being renovated use to be the laundry and was used as an exchange room for trading items the occupants in the building did not want anymore. The Tenant said anything left in the laundry room was free to pick up. The Tenant said he thought the hammer was left in the room and he could have it. The Tenant said that when he found out that it was the Landlord's hammer and the Landlord wanted it back he returned the hammer to the Landlord.

The Landlord said the police were called and the police talked to the Tenant. That is why the Tenant returned the hammer and the Landlord said the hammer was not the same hammer as was stolen by the Tenant.

The Tenant said it was the same hammer and he did not steal it he thought it was left in the exchange room. The Tenant said the police said it was not considered a theft but he must return the hammer.

The Landlord said the video shows the room is definitely not a laundry room as there are no tables or machines and the room is under renovations. The Landlord said the room was a laundry room and he understood that occupants of the rental complex used the laundry room as a place to exchange items. The Landlord said that was before the renovations started.

The Tenant's Advocate said in closing that the Landlord said there have been many thefts but he has only provided evidence for one incident and the Advocate said the Tenant took the hammer thinking it was an exchange item left by another occupant.

Further the Advocate said the Landlord has received the hammer back so the Landlord has not proven a loss has happened to him. As well the Advocate said the Landlord has talked about other warnings and complaints about the Tenant but the Landlord has not submitted any corroborative evidence to support these claims. The Advocate said the Landlord has not proven that the Tenant stole the hammer or that the Landlord has a loss.

The Tenant said in closing that the Landlord is trying to move all the old tenants out of the complex so they can renovate the room and charge more for them. The Tenant said this is about money not theft.

The Landlord said in closing that this is the only incident of theft that they have on video. It shows the Tenant stealing the hammer and the Landlord believes this shows they have caught the theft in the building. The Landlord said the other incidents happened earlier in the Tenant's tenancy and he does not want to bring them into this claim. The Landlord said they have caught the Tenant stealing a hammer and they believe he is a theft and for that reason the Landlord wants to end the tenancy as soon as possible.

### Analysis

It is apparent from the testimony and evidence that there are issues between the Tenant and the Landlord. Consequently the parties will abide by the following decision. In Section 47 of the Act, the Act uses language which is written very strongly and it's written that way for a reason. A person cannot be evicted simply because the Tenant has put the Landlord's property at risk, the Tenant must put the Landlord's property at **significant risk**. A one-time petty theft does not meet the level of significances that the Act requires. Further it is not clear that the Tenant did actually understand that he was stealing the hammer. Both the Landlord and the Tenant said this room was previously used as an exchange room for unwanted items of the occupants of the rental complex. This situation does not change the video of the Tenant removing the hammer from the room but it does cloud the reason why the Tenant was doing this. I find the Landlord has not proven without a doubt that the Tenant was stealing the hammer.

Further the second reason for the 1 Month Notice to End Tenancy was the Tenant was engaged in an illegal activity that jeopardized the right or interest of another occupant or the Landlord. As the Tenant said the police said the hammer incident was not considered a crime; I find the Landlord has not established grounds to prove the Tenant was engaged in an illegal activity that jeopardized the rights or interests of other occupants or the Landlord.

I find for the Tenant as the Landlord has not proven the reasons given on the 1 Month Notice to End Tenancy dated February 9, 2016. I order the 1 Month Notice to End Tenancy for cause dated February 9, 2016 to be cancelled and I order the tenancy to continue as agreed to in the tenancy agreement.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated February 9, 2016 to be cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

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: April 11, 2016

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Residential Tenancy Branch