



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NORTHERN PROPERTY REIT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNC, RR,O

### Introduction

The tenant applies to cancel a Notice to End Tenancy for cause, for more time to do so and for a rent reduction and other, unspecified relief.

Neither party filed a copy of the Notice in question. They agree that the Notice is a one month Notice to End Tenancy dated May 16, 2016, received by the tenant May 20, with an effective date to end the tenancy June 30, 2016. The Notice lists three grounds: a) that the tenant has significantly interfered with or unreasonably disturbed another occupant, b) that he has caused extraordinary damage, and c) that he has breached a material term of the tenancy and not corrected it after being given written notice to do so.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing. Neither side submitted any documentary evidence after the application was filed.

### Issue(s) to be Decided

Are there circumstances warranting extending the time for the tenant to apply to cancel the Notice? If so, has the landlord demonstrated good grounds for ending the tenancy? Is the tenant entitled to a rent reduction or other relief?

### Background and Evidence

The rental unit is a two bedroom apartment in a 45 unit apartment building.

The tenancy started in August 2015. There is a written tenancy agreement for a fixed term tenancy ending August 31, 2016. It requires the tenant to move out at that time.

The monthly rent is \$925.00. The landlord holds a \$450.00 security deposit and a \$450.00 pet damage deposit.

The tenant says that he did not apply to cancel the Notice within the prescribed ten day time period because the property manager Mr. B.L., who served him, told him not to worry and they would “work it out.” He says he tried to contact Mr. B.L. and the landlord but could not reach them. Later, near the end of June, Mr. B.L. told him he had to be out.

Mr. H. for the landlord says he can’t document what Mr. B.L. said but that he thinks they tried to set up meetings and the tenant did not attend.

I regard to the Notice, Mr. H. agrees the landlord has not filed any material or provided particulars of the grounds for the Notice but for two letters sent to the tenant dated January 7 and April 27, the latter being a “final warning.” The tenant admits he got the letters.

Mr. H. says the first letter warned the tenant about using a front window as a door, permitting his dogs to use the window as a door and cleaning up after the dogs.

He says the second letter again warned the tenant about using the front window and also about multiple complaints about drug use.

Mr. H. states there is no sufficient evidence to warrant the ground in the Notice alleging extraordinary damage to the premises.

Mr. H says the tenant has an unauthorized occupant and is thereby in material breach of his tenancy agreement which provides that only the tenant and persons previously authorized by the landlord may occupy the premises, defined as staying more than 14 days.

The tenant says he’s only used the window twice; when misplaced his keys and only used it for his dogs twice as well. He points out that the landlord’s evidence is pure hearsay. He says he stopped using the window after the April 27 letter.

He says his girlfriend often stays with him but not for 14 days.

## Analysis

### Extension of Time

I grant the tenant an extension of time to apply. The application material filed by the tenant makes specific reference to the property manager's alleged comments that the tenant not worry about the Notice being served, that no eviction would occur and that they would work it out. In the face of this allegation and the tenant's sworn evidence, it was virtually incumbent on the landlord to present the property manager to refute the allegation.

The landlord has declined to do so. I accept the tenant's evidence on this point and find that the tenant's delay in applying was due to the landlord's representation that it would not be required. These are exceptional circumstances, warranting an extension of time.

### The Notice

The ending of a tenancy is a very serious matter. Though the weight of evidence is tested on a scale of the balance of probabilities, a landlord will be expected to provide cogent, convincing evidence in support of its grounds for ending the tenancy. Fairness requires that a tenant be informed of the particulars of the grounds relied upon in sufficient time before a hearing to permit him to investigate and to mount a defence.

In this case the Notice must be set aside.

As the landlord's representative admits, there is no evidence of "extraordinary damage" to justify that ground listed in the Notice.

If the tenant was entering and exiting his rental unit or letting his dogs in or out by that means and if that conduct could justify the ending of the tenancy, the landlord's last warning was given April 27. There is no evidence of any continuation of that activity since that warning letter.

Similarly, if the tenant has continued to fail to pick up after his dogs, there is no evidence of it.

There is no evidence of any other occupant having been exposed to conduct suggested to be a significant interference or an unreasonable disturbance. Though the April 27 warning letter refers to complaints about drug activity, no complainants gave evidence either in person or by written statement. Without this evidence and even if the conduct

occurred as alleged, it cannot be determined that another occupant was significantly interfered with or unreasonably disturbed.

If the term of the tenancy agreement requiring landlord approval for other occupants can be seen to be a “material term” of the agreement and if the tenant is breaching it, the landlord has not given the tenant the requisite written demand required by s. 47(1)(h) of the *Residential Tenancy Act*.

#### Rent Reduction

The tenant claims a rent reduction. There was no evidence to support this claim nor any submission about it from the tenant. It is dismissed.

#### Conclusion

The tenant’s application to cancel the Notice and for more time to do so is allowed. The Notice to End Tenancy dated May 16, 2016 is hereby cancelled.

In accordance with the terms of the tenancy agreement as agreed to by the parties at this hearing, this tenancy will end and the tenant must vacate the rental unit by August 31, 2016 unless some other agreement is reached.

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: August 03, 2016

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Residential Tenancy Branch