



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on June 30, 2016,

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

### Preliminary and Procedural matters

In the tenant’s application they applied to allow a tenant more time to make and application to cancel a notice to end tenancy. However, the tenant made the application within the statutory time limit. Therefore, I find it not necessary to consider this portion of the tenant’s application.

The tenant filed evidence for the hearing; however, that evidence was not provided to the landlord. Therefore, I find it appropriate for the tenant’s evidence to be excluded.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began on May 1, 2015. Rent in the amount of \$725.00 was payable on the first of each month. The tenant paid a security deposit of \$362.50 and a pet damage deposit of \$362.50.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on August 31, 2016.

The reason stated in the Notice was that 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 tenant has engaged in illegal activity that has, or is likely to:
  - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;
  - Jeopardize a lawful right or interest of another occupant or the landlord;
- Tenant knowingly gave false information to prospective tenants.

The landlord testified that since the tenancy began there have been problems with the tenant's ex-husband TM. The landlord stated that TM lives in the rental unit with the tenant as an occupant. The landlord stated that the TM has health issues; however they no longer are able to continue the tenancy as they have a duty to the other renters.

The landlord testified that TM has interfere with their rights as landlord and has provided false information to prospective tenants, as TM will be at the main door introducing themselves as the owner of the building. The landlord stated this has happened several times and due to those actions they have lost potential tenants.

The landlord testified that TM has also been caught going their recyclable and taking their bottles and cans. The landlord stated that TM was across the road and when TM was approached by the landlord and the tenant, TM said "what is the big deal" and kicked the bag of bottles at the landlord. The landlord stated that TM clearly understood they were stealing the landlord's property.

The landlord testified that TM has also been seen in the parking lot and they have received reports that they were acting suspiciously. Doors to vehicle doors were opened and left slightly ajar. The landlord stated although they cannot prove TM was in those vehicles; however, TM was the only person in the area at the time of each

occurrence and they do not have any reason to be in the underground parking area as they do not have a vehicle.

The landlord testified that the TM was also reported by another renter to be acting suspiciously by their vehicle when the doors were found ajar.

The landlord testified that they also caught TM inside their vehicle and an argument occurred with TM as to who is the owner of the vehicle. The landlord stated that TM was not the owner of the vehicle, as the vehicle was theirs.

SA witness for landlord testified on May 31, 2016, they witnessed TM in the landlord storage where the landlord keeps there belonging and notified the landlord.

SA witness for landlord testified that they saw TM acting suspiciously by a white truck that was in the underground parking area. SA stated it appeared the door had be open and left slightly jarred. SA stated there were no other people in the underground parking.

On cross-examination of SA by the tenant's advocate, SA testified that they have not seen TM in any of the vehicle; however, they were acting suspiciously and TM does not own a vehicle.

The tenant testified that everyplace TM goes they will tell everyone that they are the owners. The tenant stated that they don't believe that TM is aware of their actions due to a brain injury. The tenant stated TM needs long term care.

The tenant testified that in May 2016, the landlord contacted them and informed them that TM had taken some of their bottles from their private storage. The tenant stated that when they approached TM, the landlord stated that those are mine.

The tenant testified that one morning they witnessed the landlord hollering at TM, to stay away from their vehicle. The tenant stated that earlier that morning they saw two men rummaging through a vehicle, which they assumed was their own, but when they were inside a taxi and the scanner said 2 men were just arrested as they were break and entering into vehicles. The tenant stated it likely those men that access the landlord's vehicle.

The landlord responded this is the first they have ever heard that the tenant witnessed 2 men rummaging through the vehicle. The landlord stated that the tenant keeps making up excuses for TM.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to support the reasons stated in the Notice.

In this case TM has been seen rummaging through the landlords belonging and take bottles and cans and when confronted by the landlord TM indicated "what was the big deal". Although TM may have a brain injury, that does not give TM the right to steal items that do not belong to them, regardless of their value.

Further, TM has been caught by the landlord inside the landlord's vehicle; TM had no lawful right to be in a vehicle which they do not own.

Furthermore, TM has been seen on several occasions in the underground parking acting suspiciously and car doors were found jarred on these occasions. Although TM is not barred from accessing the underground parking, I find it highly suspiciously when there is no reason for TM to be in this area as they do not have a vehicle and TM has been caught inside the landlord's vehicle. I find it more likely than not that TM was breaking into the vehicles.

TM did not attend the hearing to provide any testimony or to be cross-examined by the landlord. Although I accept TM has a brain injury and may need some assistance. It appears TM has the ability to be out in the community unsupervised, leading me to believe TM is functioning at a reasonable level. TM is not exempt from the laws, such a stealing bottles and cans or breaking into the vehicles. The tenant is responsible for all actions of their occupants or their guests.

Furthermore, I do not accept the tenant's testimony that they witness two men rummaging through a vehicle on the property and then later arrested for the same crime elsewhere. It would be unreasonable for the tenant not to inform the landlord of this incident or the police, especially if TM was being accused by the landlord of breaking into vehicles.

Based on the above, I find the Notice issued on June 30, 2016, has been proven by the landlord and is valid and enforceable.

Therefore, I dismiss the tenant's application to cancel the Notice.

As the tenancy legally ended on the effective date of the Notice; however, during the hearing the landlord stated that they are agreeable to extend the effective date of the Notice to September 30, 2016. Therefore, I find it appropriate to extend the effective vacancy date in the Notice to September 30, 2016, pursuant to section 66 of the Act.

Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **September 30, 2016, at 1:00 P.M.** This order must be served on the tenants and may be filed in the Supreme Court.

### Conclusion

The tenant's application to cancel the Notice, issued on June 30, 2016 is dismissed.

The landlord is granted an order of 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*.

Dated: August 24, 2016

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Residential Tenancy Branch