



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

CNC, MNDC

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An Order for the cancellation of a notice to end tenancy - Section 47; and
2. A Monetary Order for compensation - Section 67.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary matter

The Tenant states that his compensation claim is in relation to losses of power and other items due to renovations being done by the Landlord.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other. As the Tenant's claim for compensation is not related to the primary matter of the notice to end tenancy, I dismiss this claim with leave to reapply.

### Issue(s) to be Decided

Has the Landlord reinstated the tenancy?

### Background and Evidence

The tenancy started in 2010. Rent of \$500.00 per month was initially payable and the Landlord states that sometime in December 2015 the Tenant was given notice of a rent increase to \$550.00 starting January 2016. The Tenant states that the Landlord increased the rent in September 2016.

The Landlord states that the Tenant was served with a one month notice to end tenancy for cause in person on August 15, 2016. The Landlord confirms that this Notice contains two reasons. The Landlord states that the Tenant was then served a 2<sup>nd</sup> notice to end tenancy for cause because the Tenant told the Landlord that this 1<sup>st</sup> notice had been lost. The Landlord cannot recall when this notice was served as so many notices have been served and the Landlord has difficulty keeping track. The Landlord confirms that this 2<sup>nd</sup> notice contains the same two reasons as the 1<sup>st</sup> notice plus an extra reason. The effective dates of the notices are September 31, 2016 and October 15, 2016 respectively. The Landlord states that she has continued to accept rent, including November 2016 rent from the Tenant through a 3<sup>rd</sup> party agency and has not provided the Tenant or that 3<sup>rd</sup> party with a receipt indicating the rents were being accepted for use and occupancy only. The Landlord states that she told the Tenant every time that she was pursuing the end of the tenancy.

The Tenant states that the Landlord was never told that the 1<sup>st</sup> notice was lost and that the Landlord is always telling the Tenant that he is doing something wrong. The Tenant states that he does not know why the Landlord served the 2<sup>nd</sup> notice. The Tenant states that neither of the notices is in his name and that they contain the name of his brother who does not live with the Tenant. The Tenant states that he applied to dispute the notices after speaking with the Residential Tenancy Branch on the urging of his advocate. The Tenant states that he did not apply sooner because the Landlord continued to collect rents and because the Landlord never told him that she was still going ahead with the eviction. The Tenant states that at a previous hearing in June 2016 to dispute a previous notice to end tenancy for cause the Landlord did not attend the hearing. The Tenant states that because of these reasons he believed that the Landlord was not going to pursue the end the tenancy again. The Tenant states that he believes that the Landlord is trying to end the tenancy because the Landlord wants more rent and because the Landlord tells him that a family member is moving into the unit.

### Analysis

Section 47 of the Act provides that a landlord may end a tenancy by serving the tenant with a notice to end the tenancy. Policy guideline # 11 provides that a landlord cannot unilaterally withdraw a notice to end tenancy. This guideline also provides that a notice to end tenancy can be can be waived (i.e. withdrawn or abandoned), and a new or continuing tenancy created, only

by the express or implied consent of both parties. If a landlord accepts rent after the effective date of the notice to end tenancy, the intent of the parties will determine whether the tenancy has been reinstated.

Given the Landlord's issuance of a 2<sup>nd</sup> notice at some point, the Landlord's acceptance of rent without providing the Tenant with a receipt for "use and occupancy only" after the effective date of either notice, and the Tenant's undisputed evidence of the prior behavior of the Landlord in not pursuing the Tenant's dispute of a previous notice to end tenancy for cause I find that the Landlord has waived both notices to end tenancy and has reinstated the tenancy. As a result it is not necessary to determine whether either notice had any merit. The Tenant is at liberty to make an application in relation to the rental increase if the Landlord has increased the rent contrary to the Act.

#### Conclusion

The notices to end tenancy have been waived and the tenancy has been reinstated.

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: November 23, 2016

---

Residential Tenancy Branch