



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Ward Taylor Holdings LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, OPB, FF  
                                 MT, CNC, AAT, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for an Order of Possession for cause and for breach of an agreement and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for more time than prescribed to dispute a notice to end the tenancy, for an order cancelling a notice to end the tenancy for cause, for an order allowing access to (or from) the unit or site for the tenant or the tenant's guests and to recover the filing fee from the landlords.

The individual landlord attended the hearing and represented the landlord company. The landlord was also accompanied by an observer who did not testify or take part in the hearing. The tenant also attended the hearing, and the landlord and the tenant each gave affirmed testimony. The parties were given the opportunity to question each other, and the parties agree that all evidentiary material has been exchanged.

All evidence provided has been reviewed, however only the evidence and testimony that I deem to be relevant to the applications before me is considered in this Decision.

### Issue(s) to be Decided

- Has the landlord established that the 1 Month Notice to End Tenancy for Cause was issued in accordance with the *Residential Tenancy Act*?
- Should the tenant be permitted more time than prescribed to dispute the 1 Month Notice to End Tenancy for Cause?
- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Has the tenant established that the landlord should be ordered to allow access to (or from) the rental unit for the tenant or the tenant's guests?

## Background and Evidence

**The landlord** testified that this month-to-month tenancy began on December 7, 2015 and the landlord purchased the rental building in April, 2016 while the tenant was still resident in the rental unit. Rent in the amount of \$850.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The landlord currently holds a security deposit from the tenant in the amount of \$425.00 and no pet damage deposit was collected during the tenancy. The rental unit is a 2 bedroom suite in a building that also contains another suite and common areas. A copy of the tenancy agreement has been provided.

The landlord further testified that on September 6, 2016 he personally served the tenant with a 1 Month Notice to End Tenancy for Cause, a copy of which has been provided. It is dated September 6, 2016 and contains an effective date of vacancy of October 7, 2016. The reasons for issuing it state:

- Tenant has allowed an unreasonable number of occupants in the unit/site;
- Tenant or a person permitted on the property by the tenant has
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
  - put the landlord's property at significant risk;
- Tenant has assigned or sublet the rental unit/site without landlord's written consent;
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

The landlord further testified that on September 5, 2016 he attended the rental property to look through the common areas, and found debris throughout the hall near the tenant's rental unit. The tenant's door was open and there was music playing and the landlord could see inside. There were 2 young males and a female who told the landlord they were paying \$500.00 per month rent to the tenant, which commenced on August 1 for one of the males and September 1 for the other male. The female was temporarily staying there. The males said they answered an advertisement by the tenant, and copies of advertisements have been provided. The advertisements ran from July, 2016 to present. One says free laundry is included, but it is not the tenant's laundry – it's a common area. The tenancy agreement prohibits additional occupants without the landlord's written consent. The Addendum has a term that states: "The tenants listed in the tenancy agreement are the only permitted residents of the suite. Additional occupants or different occupants require the written permission of the landlord." Photographs have also been provided which the landlord testified were taken that day, September 5, 2016.

The landlord gave the tenant 48 hours notice to remove the additional occupants and a 24 hour notice to clean up the debris in the common area and outside. The door doesn't fully open, being blocked by debris, and is a significant risk.

The landlord returned to inspect the next day, and some of the debris had been cleaned up but still multiple items remained. The following day the landlord attended again to ensure that the additional occupants were gone, but they weren't. The landlord spoke with one of them, and the tenant became argumentative.

With respect to the tenant's application for an order allowing access to or from the rental unit, the landlord testified that he has never blocked or refused access to the tenant or the tenant's guests.

**The tenant** testified that he received the 1 Month Notice to End Tenancy for Cause on September 6, 2016 but had knee surgery on August 24, 2016 and couldn't walk so needed more time to get his evidence together. He also didn't have the money for the filing fee, but filed the application disputing the notice as soon as he could.

The previous landlord had verbally agreed that the tenant could get a room-mate so the tenant believed that tenancy agreement rolled over to this tenancy with the current landlord. Believing it was okay, the tenant started advertising just before August, 2016 and found a guy that needed a place to live for a month. The girl only stayed 2 days. Then the tenant met another fellow and allowed him to stay. He gave the tenant \$180.00 and they agreed that he would start to pay rent in September. The tenant returned the \$180.00 and told the person that he could stay for free as a guest of the tenant once the landlord gave the tenant notice to vacate the additional occupants. The tenant collected \$500.00 for August.

The tenant talked to the landlord while the tenant was still in Vancouver after surgery, but the landlord kept getting louder so the tenant hung up. When the tenant returned to the rental unit on September 6, 2016 everything had been cleaned up in the hallway by the tenant's occupants. The debris remaining does not belong to the tenant.

The tenant further testified that the landlord gave written notice, but didn't allow a full 24 hours, by showing up early to do the inspection, or 48 hours to vacate the occupants. The occupants, who were students, had no place to go and the tenant didn't want to make them homeless.

### Analysis

The *Residential Tenancy Act* requires a tenant to dispute a 1 Month Notice to End Tenancy for Cause within 10 days of receipt. In this case, the parties agree that it was served personally to the tenant on September 6, 2016, and the Tenant's Application for Dispute Resolution was filed on September 13, 2016, which is within the 10 days, and I find that the tenant does not require more time than prescribed to dispute it.

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was issued in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. In this case, I have reviewed the 1 Month Notice to End Tenancy for Cause and I find that it is in the approved form and contains information required by the *Act*, with the exception of the effective date of vacancy. The reasons for issuing it are in dispute.

The tenant testified that he had a verbal agreement with the previous landlord permitting the tenant to get a room-mate. The landlord's position is that the tenancy agreement specifically prohibits that. I have reviewed the tenancy agreement and Addendum, and there is written confirmation with the tenant's signature specifying that additional or different occupants require the landlord's written permission. There is no evidence to corroborate the tenant's testimony that it was agreed to and the landlord disputes that any such agreement exists, and therefore I must find in favour of the landlord.

The *Act* requires a landlord to serve such a notice before the day rent is payable under the tenancy agreement, and must be effective at the end of the month following. The *Act* also states that incorrect effective dates are changed to the nearest date that complies with the *Act*, which I find is October 31, 2016 since rent is payable on the 1<sup>st</sup> day of the month and the notice was served on the 6<sup>th</sup> day of the month.

I accept the testimony of the tenant that he didn't want to make the occupants homeless, in addition to being homeless himself or considering the tenant's obligation as a landlord. Today is the 9<sup>th</sup> day of the month, the occupants, or at least one of the occupants, still resides with the tenant. The tenant is not in arrears of rent and has paid rent for November, and I find it just in the circumstances to exercise my powers under Section 55 (3) of the *Residential Tenancy Act*, and I grant an Order of Possession in favour of the landlords effective November 30, 2016.

The tenant's application to cancel the 1 Month Notice to End Tenancy for Cause is dismissed. Since the tenancy is ending, I also dismiss the tenant's applications for an order allowing access to or from the rental unit, and to recover the filing fee from the landlords.

Since the landlords have been successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the landlords for that amount.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed.

I hereby grant an Order of Possession in favour of the landlords effective November 30, 2016 at 1:00 p.m. and the tenancy will end at that time.

I further grant a monetary order in favour of the landlords as against the tenant pursuant to Sections 67 and 72 of the *Residential Tenancy Act* in the amount of \$100.00.

These orders are final and binding and may be enforced.

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 09, 2016

---

Residential Tenancy Branch