



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNL, FF

### Introduction

This hearing dealt with a tenant's application to cancel a 1 Month Notice to End Tenancy for Cause and a 2 Month Notice to End Tenancy for Landlord's Use of Property. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

The hearing was held over two dates. At the end of the first hearing date, I informed the parties that I was cancelling the 2 Month Notice issued on August 30, 2016. Reasons for cancelling the 2 Month Notice were given orally at that time and reasons were provided in writing by way of the Interim Decision that was issued shortly thereafter. I cancelled the 2 Month Notice as I found that it had been issued pre-maturely, before the electrical permit had been obtained. The Interim Decision should be read in conjunction with this decision. Accordingly, the primary focus during the second hearing date was to continue to hear from the parties with respect to the 1 Month Notice issued on August 31, 2016.

At the start of the reconvened hearing, the tenant was given the opportunity to cross examine the landlord's two witnesses and the landlord was given the opportunity to re-direct to his witnesses. Afterward, the landlord's witnesses were excluded from the remainder of the proceeding and I continued to hear from the tenant and the landlord. It should be noted that the tenant had two witnesses present at the start of the first hearing and those witnesses were excluded at that time with instruction that they may be called at a later time. At the reconvened hearing the tenant did not call his witnesses to testify. Near the end of the reconvened hearing the tenant stated that he was satisfied that he had been heard and pointed me to particular sections of this documentary evidence package that he believed to be of significant importance to his position.

In making this decision, I have considered all of the oral testimony and submissions made to me during the hearing and I have considered all of the documentary and photographic evidence submitted to me by the parties. However, with a view to brevity, I have only summarized the most relevant evidence in providing this written decision.

### Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause dated August 30, 2016 be upheld or cancelled?

### Background and Evidence

The tenancy agreement indicates that the tenancy started on June 15, 2007 and the monthly rent was set at \$900.00 payable on the first day of every month. The monthly rent was increased over time to \$997.00; however, by way of previous dispute resolution proceedings that took place in 2015 the tenant had been authorized to reduce the monthly rent payment to \$47.00 per month by the Director of the Residential Tenancy Branch, as delegated to an Arbitrator.

The rental unit is one of nine units in the building; however, all but three of the units have been vacated recently. It is undisputed that the building has been the subject of repair and compliance orders issued to the landlord by the City. One of the occupied units is that of the on-site Property Manager who had been called to testify as a witness for the landlord.

The parties have also participated in dispute resolution proceedings to deal with previously issued Notices to End Tenancy. The previously issued and disputed Notices to End Tenancy included 2 Month Notices to End Tenancy for Landlord's Use of Property and a 1 Month Notice to End Tenancy for Cause. All of the previously issued Notices to End tenancy were cancelled. As for the previously issued 1 Month Notice to End tenancy for Cause, issued on February 25, 2016, the decision indicates that the Notice was cancelled because there was insufficient evidence to show the rental unit needed to be vacated to comply with a government order and because the Notice had not been duly signed by the landlord.

The subject 1 Month Notice to End Tenancy for Cause that is before me is dated August 30, 2016 and has a stated effective date of September 30, 2016 (herein referred to as "the 1 Month Notice"). The 1 Month Notice was posted on the tenant's door on August 31, 2016 and the tenant disputed it by filing an Application for Dispute Resolution within the time limit for doing so.

The subject 1 Month Notice indicates the reasons for ending the tenancy are:

- Tenant or a person permitted on the property by 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.

### **Landlord's reasons for ending the tenancy for cause**

In summary, the landlord submitted that the tenant is deliberately trying to interfere with the landlord's ability to carry on business as a landlord. In addition, the tenant has disturbed the peace of the other occupants. The landlord's specific examples are described below.

The landlord described how he attended the rental unit for purposes of repairing drywall in the rental unit. The landlord described how the tenant watched and videotaped the landlord for 3 to 4 hours. At times when the tenant left the rental unit the tenant secured the video recorder in place to continue recording the landlord. It was only after the landlord had patched the wall did the tenant allege there was mould behind in the wall cavity.

The landlord stated that the tenant had requested pest control services and when the landlord attended the property with a pest control technician the tenant put up such obstacles, including interrogating and questioning the technician, that the pest control technician left and will not return to the property or otherwise respond to the landlord. The tenant also prevented the landlord from entering the rental unit with the pest control technician. The landlord stated that he asked the tenant to describe what he wanted to have happen in order to permit pest control treatments and the tenant did not respond.

The landlord testified that his general contractor attended the property so as to view the repair work that is required. While the general contractor was on the property the tenant videotaped the contractor endlessly. The landlord's general contractor subsequently declined to work on the property because the project will be too much trouble given the tenant's actions. The landlord provided a letter from the general contractor in support of this position.

The landlord alleged that the tenant was seen putting debris and garbage on the residential property and taking pictures of it. The landlord pointed out that garbage removal on the property had been the basis for the tenant receiving rent abatement.

The landlord asserted that the tenant has approached other tenants of the landlord, on different properties, with a view to having other tenants challenge the landlord. The landlord pointed to a letter from another tenant of another property owned by the landlord.

The landlord also made submissions concerning the tenant's conduct as observed by the Property Manager. Below, I describe the Property Manager's testimony and submissions.

### **Property Manager's submissions**

The Property Manager testified that while she was in the back yard of the property, looking at a shed, the tenant used profanity toward her and told her it was his shed.

The tenant has complained of repair issues but interferes with the landlord's ability to deal with the issues. For example: the tenant will not provide a copy of the key to his rental unit so that the Property Manager or landlord may allow tradespersons to enter the rental unit. I heard that the landlord had lost keys to the property. Further, when the landlord attended the property with the pest control technician, the tenant would not permit the landlord to enter the unit.

The Property Manager testified that the tenant complained of a water leak in his unit yet when she asked to view the leak the tenant would not permit her to enter the unit. Rather, the tenant shut off the water to the entire building. The Property Manager also testified that the tenant had been tampering with the electrical panel for the building.

The tenant has been abusive to the Property Manager's guest, whom is disabled, because the Property Manager and her guest sit on the front porch. The tenant's conduct left her guest crying and scared. The Property Manager also alleged that she suspects the tenant as kicked her dog when her dog went in the backyard and she heard a yelp.

The Property Manager testified that she was previously a manager for a motel property owned by the landlord that was used to house some of the most hard to house individuals in the City. In September 2015 the tenant would attend the motel property and try to incite the motel tenants to riot against the landlord.

### **Former Property Manager's submissions**

The landlord had a former Property Manager testify during the hearing. The former Property Manager testified that while he was the Property Manager, the tenant was the assistant Property Manager. During that time the tenant had access to the keys to the property which is why the landlord did not have the keys. Also, the tenant boasted to him and his wife, at their personal residence, that he retaliates against landlords when a dispute arises. The former Property Manager stated that he did not pay too much attention to the statements at the time as the tenant embellishes. The former Property Manager stated that he believes the allegations put forth by the landlord and the Property Manager to be accurate, such as not allowing tradespersons enter and turning off water and electrical services because it is consistent with the tenant's statements to him.

### **Tenant's response to the landlord's allegations**

In summary, the tenant was of the position that the landlord's allegations, and those of the landlord's witnesses, are all complete fabrications and he denies them to be real. The tenant was of the position that the landlord does not have any solid evidence in support of evicting him for cause.

The tenant was of the position that it is the landlord that is retaliating against him. On several occasions, the tenant stated that their dispute originated when the tenant complained that there were insufficient garbage cans at the property.

The tenant acknowledged orally during the hearing and by way of his written submissions that he videotapes people while on the property and is of the belief he is within his legal right to do so.

In his written submissions, the tenant acknowledged that he prevented the landlord from entering his unit when the pest control technician was there. The tenant explained that he wanted to talk to the technician without the landlord's influence.

The tenant is of the position that the Property Manager was put in place to harass him and that her dog was blocking the doorway. A complaint to animal control was made and the issue has been resolved.

The tenant stated that an employee of the general contractor assaulted him when that employee was an occupant of the property. The tenant asserted that after the assault is when the general contractor wrote the letter declining to work on the property. The tenant is also of the belief that another occupant of the property is a “secret employee” of the landlord hired to assault the tenant.

The tenant pointed out that the landlord has been called to task by the City to make repairs to the subject property and during meetings with the City the landlord pointed to the tenant as being a reason the repairs have not yet been accomplished. The tenant was of the view that the landlord offloads his responsibilities to tenants, just as he did with respect to the garbage can issue.

The tenant was given the opportunity to cross examine the landlord’s witnesses. Below, I have summarized the tenant’s cross examination of the witnesses.

### **Cross examination of Property Manager**

The tenant was focused on an inspection that took place in the rental unit in July 2016. The tenant asked whether a tripping hazard was identified by him and whether action has been taken to remedy the hazard. The Property Manager acknowledged that the tenant did point out a tripping hazard and that the issue was added to a list of repairs required at the property but explained that issues of higher priority are likely to be addressed first.

The tenant questioned whether the type-written statement that bears her signature was written by her since it appears similar to other letters in the landlord’s evidence. The Property Manager confirmed that she had submitted it to the landlord.

The tenant pointed to and questioned the accuracy of one paragraph appearing in the Property Manager’s written statement, whereby she described the tenant as being the most difficult tenant she has encountered despite dealing with the most hard to house individuals while she was managing the landlord’s motel property. The Property Manager stated that she stood by that statement, indicating that the motel tenants were largely drug addicted but that the tenant is very different in that he is familiar with psychology and is a bully that preys upon people, making him much more difficult in her opinion.

After the answer to the above question, the tenant stated he had no further questions for the Property Manager.

### **Cross examination of former Property Manager**

In cross examining the former Property Manager the tenant questioned the accuracy of the former property manager's statement that he ceased managing the property in 2013, as opposed to 2012. The former property manager readily acknowledged that the tenant may be correct that it was 2012 as the former property manager was not entirely sure of the date.

The tenant questioned the whereabouts of keys the former Property Manager had access to. The former property manager testified that they were left with the tenant and he does not know what happened to them after that.

As for statements about sabotaging other landlords the former Property Manager acknowledged that he was unaware of any former landlords the tenant actually took to court or received rent abatement from. Rather, the former Property Manager explained that his testimony was merely repeating what the tenant had told him and his wife.

### **Opportunity to settle**

As provided under section 63 of the Act, I have the authority to assist parties in reaching a settlement agreement in resolution of their dispute. As the reconvened hearing was nearing an end, I explored the possibility of resolving this matter by way of a mutual agreement given the readily apparent toxic tenancy relationship between the parties.

The tenant acknowledged that the tenancy relationship is extremely toxic and repeatedly stated that what he seeks is for the landlord to serve him a 2 Month Notice to End Tenancy for Landlords Use of Property in accordance with the Act. With a view to assisting the parties find resolution by way of giving the tenant all of the same rights and compensation that a 2 Month Notice provides to a tenant in lieu of making a determination as to the validity of the 1 Month Notice was explored with the tenant. The tenant stated he would not agree to end the tenancy even if he were offered all of the benefits that would come along with a 2 Month Notice. Only after probing and examining the inconsistency with his earlier position did the tenant reveal that if he is served with another 2 Month Notice he will dispute it.

### Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Upon review of the subject 1 Month Notice, I find that it is in the approved form and is duly signed and completed. Thus, I find that it meets the form and content requirements of the Act and I proceed to consider whether the landlord has met the burden to prove, on a balance of probabilities, that the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated a 1 Month Notice to End Tenancy for Cause, as in this case, it is sufficient to uphold the Notice where one reason is proven.

Although the landlord has previously issued a number of Notices to End Tenancy to the tenant, I find the subject 1 Month Notice before me to be distinct from the others. The previously issued 2 Month Notices to End Tenancy for Landlord's Use and the 1 Month Notice to End Tenancy for Cause issued on February 25, 2016 pertained to the landlord's intentions to use the property and make repairs. While the tenant was successful in disputing the previously issued Notices to End Tenancy; I find the 1 Month Notice before me concerns the tenant's more recent conduct, starting in June 2016, as opposed to the landlord's intentions to use and repair the property. Accordingly, it is the tenant's conduct that is the primary focus of this proceeding and the subject 1 Month Notice.

The landlord asserted that the tenant has interfered with his ability to conduct business as a landlord and disturbed the quiet enjoyment of occupants. The reasons indicated on the 1 Month Notice are provided under section 47(1)(d) of the Act. Section 47(1)(d) provides, in part, that a tenancy may be ended where a tenant:

- (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant,

[Reproduced as written with my emphasis underlined]



Under the definition of landlord, in section 1 of the Act, a landlord includes an agent for the landlord or a person authorized to act on the landlord's behalf. Accordingly, a the person appointed as a Property Manager by the owner is by definition a landlord and if a tenant interferes with a Property Manager's lawful duties the tenant is interfering with the landlord lawful rights.

As for disturbances, I heard from the Property Manager that the tenant swore at her and said mean things to her guest on one occasion. I do not consider those incidents to be sufficiently significant interference or disturbance so as to warrant eviction. Rather, I would find it more appropriate to give the tenant a warning that repeated conduct such that may be grounds to find a basis to end the tenancy, if the tenancy were to continue. Accordingly, I proceed to consider the other reason the landlord put forth for ending the tenancy: seriously jeopardizing the landlord's lawful right or interest of the landlord.

A landlord has the obligation and a right to repair and maintain a residential property. Where a landlord brings a tradesperson to the property with a view to remedying existing repair issues or planning future repairs or renovation, I am of the view the landlord is entitled to enter the property along with the tradesperson with proper notice. Further, the tradesperson should not be interfered with by the tenant and I accept that some tradespersons would not welcome a barrage of questions and videotaping by a tenant and that such behaviour would result in the tradesperson declining to work at the property. I further find that if a tenant were to notify the landlord that there is water leaking in their unit that they not preclude the landlord from investigating so as to determine whether an emergency exists and to prevent further damage to the property. I also find it inappropriate for a tenant to tamper with or interrupt the services to the property, such as water and electricity, especially when a Property Manager is on site as in this case. Accordingly, I find that all of the above described actions of a tenant, together or in any combination, are grounds for me to find that a tenant has seriously jeopardized the lawful right of a landlord and a basis for ending the tenancy.

Upon review of all of the tenant's evidence, I accept that the landlord has allowed the property to go into disrepair in the past and it appears that only upon enforcement action by the authorities does he react. However, as stated above, the tenant's conduct is the focus of the subject 1 Month Notice to End Tenancy for Cause and I am of the view that the landlord's lack of repairs and attention to this property in the past does not give the tenant the right to try to impede the landlord's efforts when he does attempt to maintain or facilitate repairs at the property.

The landlord and Property Manager described incidents where the landlord's ability to repair and maintain the property had been interfered with by the tenant. Those incidents include: denying the landlord entry to the rental unit when the landlord attended with a pest control technician after giving the tenant a notice of entry; interrogating the pest control technician which resulted in the pest control company not returning to the property; informing the Property Manager that there was a leak in the rental unit and then denying the Property Manager entry into the rental unit to investigate further but turning off the water supply to the entire building; video recording the general contractor as he inspected the residential property which resulted in the general contractor declining to work on the property.

While the tenant testified that all of the landlord's allegations were fabricated and untrue, I find the tenant's own submissions demonstrate that a number of events described by the landlord did take place. In section 11 of the tenant's written submissions he admitted that he precluded the landlord from entering his rental unit when the landlord brought a pest control technician to the rental unit, thereby confirming one of the landlord's allegations to be true. The tenant also admitted to videotaping people on the property in section 2 of his written submissions and did not deny videotaping the landlord and the landlord's general contractor, leading me to accept the landlord's submissions concerning videotaping of him and his general contractor to be true. Since the tenant demonstrated that some of the events the landlord described were accurate, it is apparent to me that not all of the landlord's submissions are fabricated. Accordingly, I find the tenant's assertion of complete fabrication is an exaggeration and the reliability of his testimony to be questionable.

Of further consideration as to the tenant's credibility, the tenant repeatedly asserted during the hearing that he wanted to receive a 2 Month Notice in accordance with the Act, yet the tenant eventually acknowledged that he would dispute a 2 Month Notice only after further probing and examination of his inconsistent position. I find the tenant's oral statements that all he wanted was a 2 Month Notice to be intentionally misleading and inconsistent with his intentions. Thus, I find the tenant's statements unreliable in this regard as well.

In light of the above, I find the tenant's testimony and submissions to be inconsistent and unreliable and, as a result, I find the tenant's credibility to be lacking. On the other hand, I found the testimony and submissions of the landlord's witnesses to be credible and consistent, as described below.

Upon review of the testimony of the Property Manager and her written statement I found her submissions to be clear and consistent. During the hearing, the Property Manager provided a considerable amount of testimony as to what she experienced with the tenant at the property during her somewhat short tenure as Property Manager. Yet, the tenant did not challenge or rebut much of her testimony under cross examination. Rather, when the Property Manager remained consistent in her submissions and provided reasonable explanations to questions posed to her by the tenant in his cross examination of her. Accordingly, I rely upon the Property manager's testimony and written submissions.

As for the testimony of the former Property Manager, I found his demeanor to be non-confrontational toward the tenant and he readily acknowledged that he was uncertain as to the year he ceased being the Property Manager when challenged by the tenant. However, his testimony as to what the tenant had said to him and his wife while the tenant was the assistant Property Manager was unwavering and I accepted that it was truthful. I also noted that although the tenant denied every taking a former landlord to court or receiving a rent abatement, he did not expressly deny the making the statement to the former Property Manager.

While it is unusual for a tenant who seeks repairs to interfere with a landlord's ability to make those repairs, in this case, the landlord suggested one motivation is retaliation for the terminating the tenant as the assistant property manager. I accept there is reasonably likeliness that this is a motivator for the tenant especially considering the testimony of the former Property Manager and the tenant's attempts to have other tenants of the landlord take action against the landlord. Further, it is difficult to ignore that the tenant's rent obligation has been extremely reduced from \$997.00 to \$47.00 per month as a result of maintenance issues.

In light of all of the above, I accept the submissions of the landlord and his witnesses over the tenant's denials and I find the landlord has satisfied me the tenant has seriously jeopardized the landlord's lawful rights as a landlord. Accordingly, I uphold the 1 Month Notice that was posted on the tenant's door on August 31, 2016 and I dismiss the tenant's application to cancel it.

Under section 55(1) of the Act, where a Notice to end Tenancy is upheld and the Notice meets the form and content requirements of the Act, an Order of Possession must be provided to the landlord. Accordingly, I provide the landlord an Order of Possession with this decision. Since the effective date of the 1 Month Notice has since passed, the landlord is provided an Order of Possession with an effective date of November 30, 2016.

Conclusion

The 1 Month Notice has been upheld and the tenant's application to cancel it is dismissed. The landlord has been provided an Order of Possession with an effective date of November 30, 2016 pursuant to section 55(1) of the Act.

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 22, 2016

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Residential Tenancy Branch