



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes:

CNC, O

### Introduction

This hearing was convened in response to the Tenant's Application for Dispute Resolution, in which the Tenant applied to set aside a Notice to End Tenancy for Cause and for "other".

The Tenant stated that the Application for Dispute Resolution, the Notice of Hearing, and a copy the One Month Notice that is the subject of these proceedings were sent to the Landlord, via registered mail, although he cannot recall the date of service. The Landlord acknowledged receipt of these documents and the evidence was accepted as evidence for these proceedings.

On November 22, 2016 the Landlord submitted 5 pages of evidence to the Residential Tenancy Branch. The Advocate for the Landlord stated that these documents were personally served to the Tenant on November 22, 2016. The Tenant acknowledged receipt of these documents and they were accepted as evidence for these proceedings.

Both parties were represented at the hearing. They were provided with the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

### Issue(s) to be Decided

Should the Notice to End Tenancy for Cause, served pursuant to section 47 of the *Residential Tenancy Act (Act)*, be set aside?

### Background and Evidence

The Landlord and the Tenant agree that:

- they entered into a verbal tenancy agreement;
- the Tenant agreed to pay rent of \$400.00 by the first day of each month;
- the Tenant has exclusive use of one bedroom in this residential complex;

- the Tenant shares the bathroom and the kitchen with three other occupants, none of whom are the Landlord;
- the Landlord uses the living room to provide church services;
- on October 18, 2016 the Landlord served the Tenant with a One Month Notice to End Tenancy for Cause, which is dated October 18, 2016;
- the One Month Notice to End Tenancy declared that the Tenant must vacate the rental unit by November 20, 2016;
- the One Month Notice to End Tenancy declared that the Landlord wished to end the tenancy because the Tenant has not paid a security deposit within 30 days of the deposit being due.

The Tenant stated that the tenancy began in May of 2016. The Advocate for the Landlord stated that the tenancy began on June 15, 2016.

The Advocate for the Landlord stated that the Landlord and the Tenant discussed paying a \$200.00 security deposit but the Tenant would not agree to pay a security deposit. The Tenant stated that they did not discuss a security deposit until July 18, 2016 and he did not agree to pay a security deposit of any amount.

The Landlord was not permitted to give evidence regarding reasons for wishing to end the tenancy, other than the failure to pay a security deposit, as no other reasons for ending the tenancy were cited on the Notice to End Tenancy that was served to the Tenant. The parties were advised that if the Landlord has other reasons for ending the tenancy the Landlord may serve the Tenant with another Notice to End Tenancy.

### Analysis

Section 4(b) of the *Act* stipulates that this *Act* does not apply to living accommodations in which the Tenant shares the kitchen or bathroom facilities with the owner of the residential property. The undisputed evidence is that the Landlord does not share the kitchen or bathroom facilities with the Tenant. I therefore find that I have jurisdiction over this tenancy.

Section 20(a) of the *Act* stipulates that a landlord must not require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement.

The undisputed evidence is that the Tenant has never agreed to pay a security deposit. As the Tenant has not agreed to pay a security deposit and the tenancy has begun, I find that the Tenant is not obligated to pay a security deposit and that the Landlord no longer has the right to require the Tenant to pay a security deposit.

Section 47(1)(a) of the *Act* authorizes a landlord to end a tenancy by giving notice to end the tenancy if the tenant does not pay the security deposit or pet damage deposit within 30 days of the date it is required to be paid under the tenancy agreement. As the

Tenant is not required to pay a security deposit the Landlord does not have the right to end this tenancy pursuant to section 47(1)(a) of the *Act*.

As the One Month Notice to End Tenancy that is the subject of this dispute does not declare that the Landlord wishes to end the tenancy for any reason other than section 47(1)(a) of the *Act* and I have determined that the Landlord does not have grounds to end this tenancy pursuant to section 47(1)(a) of the *Act*, I grant the Tenant's application to set aside the One Month Notice to End Tenancy, which is dated October 18, 2016.

### Conclusion

The One Month Notice to End Tenancy, dated October 18, 2016, has been set aside. This tenancy shall continue until it is ended in accordance with 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 *Act*.

Dated: December 13, 2016

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Residential Tenancy Branch