



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

matter regarding PROSPERO INTERNATIONAL REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC FF

### Introduction

This hearing was convened to hear matters pertaining to an Application for Dispute Resolution filed by the Tenant on January 26, 2017. The Tenant filed seeking an order to cancel a 1 Month Notice to end tenancy for cause and to recover the cost of his filing fee.

The hearing was conducted via teleconference and was attended by three agents for the corporate Landlord (the Landlords) and the Tenant. The application for Dispute Resolution listed one corporate Landlord as the respondent. Therefore, for the remainder of this decision, terms or references to the Landlords importing the singular shall include the plural and vice versa, except where the context indicates otherwise.

At the outset of the hearing the Tenant stated he was trying to get ahold of or add his friend to this teleconference to assist him during this hearing. I informed the Tenant his assistant could call into the hearing by dialing directly from his own phone. The Tenant's assistant, (the Assistant) dialed into the hearing 14 minutes after the hearing began. I explained the process to the Assistant and told him who was present.

Each Landlord and the Tenant provided a solemn affirmation. The Assistant stated that he would not be providing evidence as he did not have firsthand knowledge of these events. He stated that he was attending the hearing to assist the Tenant in the event the Tenant did not understand the process.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each party was provided an opportunity to ask questions about the process; however, each declined and acknowledged that they understood how the conference would proceed.

The Landlord presented their evidence first and then the Tenant was given the option to either have his Assistant speak on his behalf first or for him to present his evidence first. The Tenant chose to speak on his own behalf. During the Tenant's submissions, his Assistant disconnected from the hearing at 11:21 a.m.; without prior notification. I then

asked the Tenant if he had expected the Assistant to attend the full hearing. I heard the Tenant state he was aware that his Assistant was at work and that he would have to leave the hearing for an appointment. The Assistant did not dial back into the proceeding and the hearing continued in his absence.

During the course of this proceeding the Tenant displayed a good understanding of the English language as he provided intelligent answers to all of my questions. In addition, the Tenant displayed a willingness to provide testimony and spoke intelligently about the events leading up to the issuance of the 1 Month Notice. As such, I was satisfied that the Tenant demonstrated capacity to represent himself during this hearing, in absence of his Assistant.

The Tenant confirmed receipt of the Landlords documentary evidence sometime around February 15, 2017. Although the parties disputed how the evidence was served; either posted to the door or placed under the door; I note that either method would meet the requirements set out in the Rules of the Procedure. Therefore, I considered the Landlords' documentary and oral submissions as evidence for this proceeding.

Both parties were provided with the opportunity to present relevant oral evidence, to ask questions, and to make relevant submissions. Although I was provided a considerable amount of evidence including: verbal testimony and documentary evidence; with a view to brevity in writing this decision I have only summarized the party's respective positions below.

#### Issue(s) to be Decided

- 1) Should the 1 Month Notice to end tenancy issued January 18, 2017 be cancelled or upheld?
- 2) If upheld, should the Landlord be granted an Order of Possession?

#### Background and Evidence

The parties entered into a written fixed term tenancy agreement which commenced on February 1, 2014 and switched to a month to month tenancy after July 6, 2014. Rent began at \$1,350.00 per month and was subsequently increased to \$1,370.00 per month. On January 27, 2014 the Tenant paid \$675.00 as the security deposit.

The rental unit was described as being an apartment on the 17<sup>th</sup> floor of a 22 story building. The building consisted of 176 rental apartments.

On January 18, 2017 the Landlord personally served the Tenant a 1 Month Notice. That Notice was issued pursuant to Section 47(1) of the *Act* and listed an effective date of February 28, 2017 for the following reasons:

- 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

The Landlords made the following submissions to support their request for an Order of Possession:

- On January 17, 2017 at approximately 10:45 to 11:00 p.m. the relief manager heard a smoke alarm and traced it to the Tenant's rental unit. The relief manager smelled smoke and knocked several times on the Tenant's door. When the Tenant failed to answer the relief manager entered the unit and found the unit filled with smoke; a pot burned dry on the stove; what appeared to be eggs exploded on the ceiling and walls; the stove still turned on; "drug paraphernalia" consisting of two glass pipes; and the Tenant lying face down on the floor passed out. The relief manager secured the rental unit and left to retrieve the resident manager.
- The resident manager attended the unit and woke the Tenant up. I heard her state she initially thought the Tenant had died as it took her awhile to wake him. She stated that she told the Tenant she did not know what he was smoking in those pipes and he responded telling her that he smoked [a type of drug] to help him fall asleep.
- The resident manager spoke about two previous incidents; (1) when she found the Tenant passed out with his television so loud that it disturbed other tenants. She stated that time he had passed out after taking something; and (2) when the building had been vandalized after the Landlord provided the Tenant with video evidence of his friend stealing his possessions.

The Tenant disputed the 1 Month Notice and made submissions as summarized below:

- He never cooked and used the oven only for storage. However, on January 17, 2017 he decided to boil some eggs.
- The items beside the stove were not two glass pipes; they were equipment used to mix colors for his fashion job. He said he recalled the Landlord yelled at him when she woke him up saying "I know you are smoking that [drug reference] again.
- The Tenant submitted that he had been taking medication for his condition for a long time and had tried upwards of three different types of medication to try and stabilize his condition.
- The Tenant read a letter into evidence dated February 17, 2017 letter, written by his Doctor. The Tenant submitted that letter stated he suffered from a medical condition and a recent syncope and they were investigating further management. The Tenant stated that when he passed out like that he cannot move his body when he first awakes.
- I heard the Tenant state that after the incident on January 17, 2017, he did not go to the Doctor until February 11 or 12<sup>th</sup>, 2017.

- The Tenant submitted that he had no medication on the night of January 17, 2017 which caused him to faint. I heard the Tenant state that he had ran out of medication and every time he went to the pharmacy to purchase medication the pharmacist would have to send a fax to his doctor for approval of the refill.
- I heard the Tenant state he purchased his medication on February 19, 2017.

The Tenant testified that he did not go to the emergency room the evening of January 17, 2017 and he did not see his Doctor or attempt to get his prescription refilled prior to February 11 or 12, 2017, because he said his situation was “not an emergency”. He argued that his Doctor only worked two days a week so it takes a while for him to be seen which is also why the pharmacy has to fax requests for his medication refills to be approved.

In closing, the Tenant stated that he was feeling very embarrassed and shocked this incident occurred.

### Analysis

Section 62 (2) of the *Act* stipulates that the director may make any finding of fact or law that is necessary or incidental to making a decision or an order under this *Act*. After careful consideration of the foregoing; documentary evidence; and on a balance of probabilities I find pursuant to section 62(2) of the *Act* as follows:

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the Tenant in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons.

In determining the matters relating to the Notice I also considered that section 32(2) of the Act requires a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit.

It was undisputed that the Tenant had passed out leaving a pot of eggs on the stove which burned; exploded; and caused the unit to fill with smoke and the smoke alarm to go off in the 22 storey building. Fortunately the relief manager attended the rental unit and was able to secure the scene before a fire occurred. I accept that the aforementioned events put the Landlord's property at significant risk and jeopardised the health and safety of all occupants and residents in the 176 units in the building.

When living in a multi-unit building a Tenant bears a level of responsibility towards the rental unit to ensure that they are in a fit state to monitor items being left on a stove. In

this case, I accept the Tenant failed to exercise due diligence and neglected his responsibilities towards the rental unit, which caused the events of January 17, 2017.

Firstly, when considering the Tenant's version of events that he had passed out due to running out of medication for his medical condition; I find the Tenant failed to take reasonable action to have his prescriptions filled before he completely ran out of his medication. The Tenant was well aware of the pharmacy process and how he always had to wait a couple of days for them to fax his refill request prior to him gaining access to his medication. Therefore, I conclude the Tenant made a choice not to be proactive in having his medication filled before running out, as a reasonable person would have done. It was that choice, which caused him to be without medication and, by the Tenant's submissions, caused him to pass out leaving a pot cooking on the stove putting the Landlord's property and all of the occupants in the building at risk.

In addition, I find there was insufficient evidence to support the Tenant's assertion that the events of January 17, 2017 were in fact caused only by his medical condition. I accept there was irrefutable evidence that the Tenant does suffer from a medical condition; however, there was insufficient evidence to prove that condition caused the Tenant to faint or pass out on January 17, 2017. If the Tenant was passed out due to a medical condition, to the point that he was so difficult to wake, as described by both parties, I question why no one called an ambulance; why the Tenant did not go to the hospital; or why the Tenant waited to seek medical attention until February 11 or 12<sup>th</sup>, 2017; which was 26 days after this event occurred.

Regarding the Landlords' evidence as to why the events of January 17, 2017 occurred they submitted they saw drug paraphernalia sitting beside the burning pot. The Landlords stated they suspected, and were told by the Tenant, he had passed out after using some illicit drugs. Leaving food cooking on the stove while passing out due to the use of drugs or alcohol would also be a failure to exercise due diligence and neglecting responsibilities towards the rental unit; and would also support the reasons listed on this 1 Month Notice.

Based on the totality of the evidence before me, I find there to be sufficient evidence to uphold the 1 Month Notice issued January 18, 2017. Accordingly, the Tenant's Application to cancel that Notice is dismissed in its entirety.

Section 55(1) of the *Act* stipulates that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if (a) the landlord's notice to end tenancy complies with section 52 [*form and content of notice to end tenancy*], and (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

Having found the Notice to be issued in accordance with the *Act* and dismissing the Tenant's application, the Landlord has been issued an Order of Possession effective **February 28, 2017 after service upon the Tenant**. In the event that the Tenant does

not comply with this Order it may be filed with the Supreme Court and enforced as an Order of that Court.

Conclusion

The Tenant was not successful with his application and The Landlord was granted an Order of Possession.

This decision is final, legally binding, and 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: February 27, 2017

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Residential Tenancy Branch