



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      OPC  
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### Introduction

This hearing was convened by way of conference call concerning applications made by a landlord seeking an Order of Possession for cause; and by the tenant seeking an order cancelling a notice to end the tenancy for cause.

The tenant has named 2 landlords in the application, and the landlord's application names only 1 landlord. The landlord named in both applications, and the tenant attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other.

During the course of the hearing, the landlord questioned the tenant about providing evidence to the landlord, and advised that she had heard about the date the tenant's application was scheduled to be heard from the landlord's property management company. The tenant testified that the landlord's property management company was served on February 8, 2017 with the hearing package which also contained the tenant's evidence.

I have reviewed the tenancy agreement, which shows a signature of the property manager on behalf of the landlord. The landlord has been advised by a property management company that documents had been served, and the landlord had a responsibility to collect those documents. I find that the tenant has provided the evidence as required, and all evidence of both parties is considered in this Decision. No further issues with respect to service or delivery of documents or evidence were raised.

### Issue(s) to be Decided

- Has the landlord established that the notice to end the tenancy issued by the landlord was issued in accordance with the *Residential Tenancy Act*?
- Should the 1 Month Notice to End Tenancy for Cause be cancelled?

### Background and Evidence

**The landlord** testified that this fixed term tenancy began on November 1, 2016, which expires on October 31, 2017 and then reverts to a month-to-month tenancy. The tenant still resides in the rental unit, and a copy of the tenancy agreement has been provided. Rent in the amount of \$1,000.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$500.00 which is still held in trust by the landlord and no pet damage deposit was collected. The rental unit is a half duplex, and the other unit is also tenanted.

The landlord further testified that she personally served the tenant with a 1 Month Notice to End Tenancy for Cause on January 31, 2017, a copy of which has been provided. It is dated January 31, 2017 and contains an effective date of vacancy of March 1, 2017. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - put the landlord's property at significant risk;
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:
  - damage the landlord's property
  - adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
  - jeopardize a lawful right or interest of another occupant or the landlord.

The tenancy agreement provides for 2 parking spaces, and the tenant had used 5 or 6 spots, leaving little space for the neighbouring tenant. The landlord asked the tenant via telephone conversation and text messages to remedy that, but after a few weeks, the neighbouring tenants still complained. On December 31, 2016 written notice was given to the tenant to remove the boat, motorhome and all unlicensed vehicles before January 31, 2017, and a copy has been provided. When the notice to end the tenancy was issued, there were still 3 vehicles. The utility trailer and boat are still there.

The tenant erected a lean-to from the top deck to the bottom deck of the rental unit, which is an eyesore with tarps attached to it on the sides. There was no reason for it since there is also a storage shed on the property. The deck was built 2 summers ago and now the wooden structure appears to be attached. The landlord did not give permission to erect it. The tenant also took a screen out of a screen door and tied the door open.

With respect to disturbances and illegal activity, the neighbouring tenants started to complain in November about the parking issue. The landlord also received complaints in December and January, and that police had been at the rental unit. Search warrants were issued to enter the property and police took 2 people away in handcuffs and retrieved stolen property. A newspaper article, a copy of which has been provided, reported that police found stolen snow blowers.

The landlord talked to the tenant about the structure and parking, which became very confrontational, and the tenant's adult son was there.

The tenancy agreement provides that the tenant will not have any pets, but the tenant has a cat, and a photograph of a cat outdoors has also been provided.

**The tenant** testified that the number 1 issue in November was the additional vehicles on the property. At the end of December the tenant's son and girlfriend were supposed to remove some but due to a heavy snowfall they couldn't get to the rental unit as soon as expected. There is so much snow that no one can use the back area. Now just the tenant's car is out front.

On December 31 the landlord showed up saying that she wanted the RV moved and the lean-to taken down. The RV was moved around January 10.

The tenant denies having any cats, and the landlord has no evidence of that; only hear-say testimony.

The tenant's son made some poor choices and it was a drunken night, however police told the tenant there were no charges against her. The tenant's son has moved to another country.

The tenant erected the lean-to due to heavy snow to protect her quad, sleds and carpentry tools. It is not attached at all, but free-standing. The landlord wanted the tenant to buy a carport canopy because the one the tenant erected was an eyesore. Numerous photographs have been provided depicting collapsed similar canopies. Also are photographs of the lean-to erected by the tenant which are marked with explanations to show that it is free-standing. It has 5 pieces of tin on 6 poles with a 9 to 6 foot pitch.

The landlord was going to fix the screen door, but didn't and it was flapping in the wind. The landlord asked the tenant to take the ties off, and the tenant complied, and it's now propped open with a bench. There has been no damage caused to the rental unit.

The tenant further testified that she gets along fine with the neighboring tenant but don't see each other often. They shared internet and shoveled snow for each other. The tenant has also painted and completed some drywall repair around windows in the rental unit. The tenant seeks an order cancelling the notice to end the tenancy and has provided unsigned letters of reference, one stating that the cat in the landlord's photograph belongs to the writer.

### Analysis

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 given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. 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*. The reasons for issuing it are in dispute.

The tenancy agreement clearly provides for 2 parking spaces. The landlord has received complaints from the neighbouring tenants who also have a right to parking. The tenant has breached that, regardless of how long which of the vehicles ought to have not been parked on the rental property.

Whether or not the tenant has been or will be charged with an offence, I do not accept the defence of the tenant that it was a drunken night that caused police to obtain a search warrant, search the rental property, and retrieve stolen property. I have also read the text messages provided as evidence by the landlord, and I am satisfied that the neighbouring tenants have been disturbed. Therefore, I find that a person permitted on the property by the tenant has engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant and has jeopardized a lawful right or interest of another occupant or the landlord.

Having found that the landlord has established some cause to issue the notice to end the tenancy, I find it unnecessary to address the other reasons contained in that notice. In the circumstances, I find that the landlord had cause to issue the notice ending the tenancy and the tenant's application is dismissed. I hereby grant an Order of Possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the Order of Possession on 2 days notice to the tenant.

Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$100.00 filing fee, and I order that the landlord be permitted to keep that amount from the security deposit currently held in trust, and to deal with the remainder of the security deposit in accordance with the *Residential Tenancy Act*.

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 landlord on 2 days notice to the tenant.

I hereby order the landlord to retain \$100.00 of the security deposit currently held in trust as recovery of the filing fee, pursuant to Section 67 of the *Residential Tenancy Act* and to deal with the remainder of the security deposit in accordance with the *Residential Tenancy Act*.

This order is 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: March 13, 2017

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Residential Tenancy Branch