



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUMMER HOTEL LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes MT, CNC, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") to:

- allow the tenant more time to make an application to cancel a notice to end tenancy pursuant to section 66;
- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- recovery of the filing fees of this application from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The tenant was represented by counsel who spoke on his behalf (the "tenant"). The corporate landlord was represented by the building owner HL, whose sworn testimony was translated by the translator MT (the "landlord").

As both parties were in attendance I confirmed that there were no issues with service of the landlord's 1 Month Notice, the tenant's application for dispute resolution or either party's evidentiary materials. The landlord confirmed receipt of the tenant's dispute resolution package. I find that the landlord was served with the tenant's application and evidence in accordance with sections 88 and 89 of the *Act*.

The tenant testified that he received the landlord's 1 Month Notice on May 22, 2017. I find that the tenant was served with the 1 Month Notice in accordance with section 88 of the *Act*. The tenant said that he was not provided with the landlord's evidence and the landlord confirmed that it was not served on the tenant. As the landlord stated that they had not served the tenant with their evidence, I advised the parties that I would only consider those pieces of evidence included in the landlord's materials which the tenant

confirmed having received on prior occasions. I have taken this approach after considering the guidance provided by Rule 3.17 of the Rules of Procedure.

#### Issue(s) to be Decided

Should the tenant be allowed an extension of time to file their application?

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for the application from the landlord?

#### Background and Evidence

This periodic tenancy began in the summer of 2005. There is no written tenancy agreement. The landlord testified that she has not resided in the province since 2007 and her business partner and agents managed the property. The landlord testified that she returned to the province in early 2017 and discovered that the tenant was engaging in activity that put the property and its occupants at risk.

The landlord testified that the tenant is engaging in criminal activity involving illegal substances, renting out rooms to substance users, “cash trading” and storing stolen items in the rental building. The landlord testified that she installed cameras in the rental building and has evidence of the activity. No photographs or written evidence of the alleged activities were submitted.

The landlord said that the tenant has incited the other residents of the rental building to damage the building. She said that tenant has threatened the landlord with physical harm and that the tenant owns a large dog that is a source of concern. The landlord did not articulate what damage the dog has caused, nor did she submit any evidence of any damage. The landlord said that she has hired a security company to protect her as she feels threatened by the tenant but provided no written evidence in support.

The landlord testified that she has had a falling out with a former business partner and believes that the tenant is now allied with the business partner against her. The landlord did not provide any written evidence in support of this allegation. The landlord did not provide an explanation of why she believes that this would be grounds for ending the tenancy.

#### Analysis

Section 49 of the *Act* provides that upon receipt of a notice to end tenancy for landlord’s use of property the tenant may, within fifteen days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

While the tenant has applied for an extension of time to make an application pursuant to section 66 of the *Act* I find that the tenant has filed their application on May 31, 2017 within the prescribed time limit and an order is unnecessary. I decline to issue an order for an extension of the time limit to file an application for dispute resolution.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord identified as the reasons for the tenancy to end as:

- The tenant or a person permitted on the property by the tenant:
  - has significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- The tenant or 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;
  - jeopardized a lawful right or interest of another occupant or landlord.
- The tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. I find that the landlord has provided insufficient evidence in support of their claim. The landlord provided vague conjecture, general accusations and hearsay. The landlord failed to provide detailed evidence regarding the tenant's activities and how they may give rise to a reason to end this tenancy. When asked to provide specific instances of incidents the landlord simply repeated her vague accusations. I find the landlord's evidence to be vague, subjective and without substance.

In the absence of a written tenancy agreement and only a nebulous understanding between the parties of the terms of the tenancy I am unable to find that there is a specific material term that has been breached by the tenant. In any event, I find that

there is no evidence that the landlord provided written notice to the tenant of a breach of a term of the tenancy.

In addition the landlord accused the tenant of conspiring with the landlord's former business partner against her. Even if this were true it would not be a reason to end this tenancy. The allegation does cast doubt on the landlord's good faith in issuing the 1 Month Notice and where there is a conflict in the testimony of the parties I find the tenant's version of events to be more credible. I accept the tenant's testimony that the tenant has not engaged in illegal activities, has not incited other residents of the rental building to vandalize the premises nor has he physically threatened the landlord.

I find that both cumulatively and individually the landlord has not provided sufficient evidence to support ending this tenancy. Accordingly, I find that the landlord has not met their onus and accept the tenant's application to cancel the 1 Month Notice. The 1 Month Notice is cancelled and of no further force or effect. This tenancy will continue until ended in accordance with the *Act*.

As the tenant's application was successful the tenant is entitled to a monetary award to recover the filing fee for this application from the landlord.

#### Conclusion

The 1 Month Notice is cancelled and of no further force or effect. This tenancy will continue until ended in accordance with the *Act*.

I issue a monetary order in the tenant's favour in the amount of \$100.00. The landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: July 18, 2017

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Residential Tenancy Branch