



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      FF, OPC

### Introduction

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

- an Order of Possession for unpaid rent pursuant to section 55; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The parties acknowledged receipt of evidence submitted by the other.

### Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for Cause?

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

### Background and Evidence

The tenancy began on or about March 1, 2012. Rent in the amount of \$725.00 is payable in advance on the first day of each month.

The landlord testified that the tenant has threatened his life on numerous occasions since the day that he moved in. The landlord testified that the tenant continually climbed onto the roof to water his plants putting his insurance at risk. The landlord testified that the tenant has many different occupants coming and going. The landlord testified that the tenant throws cat feces and yard trimmings into the neighbors' properties. The landlord testified that he wants the tenancy to end and for the tenant to move out.

The tenant gave the following testimony. The tenant testified that he adamantly disputes the landlords' testimony. The tenant testified that the landlord is the one that is uttering threats and not him. The tenant testified that he lives alone and only had a roommate for several months. The tenant testified that the tenancy was based on a dual occupancy. The tenant testified that he does not throw items into other people's yards and does not walk on the roof to water his plants. Counsel for the tenant submits that despite the fact that the tenant did not file to dispute the notice, the landlord has not provided evidence to support the issuance of the notice and therefore the notice is of merit and should be set aside.

### Analysis

The relationship between these two parties is an acrimonious one. Both parties were cautioned numerous times about their behaviour and demeanour during the hearing. At times the landlord made allegations of "liar and fraud" to the tenant.

The landlord issued a One Month Notice to End Tenancy for Cause on May 16, 2017 on the following grounds pursuant to section 47 of the Act.

**47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*

*(c) there are an unreasonable number of occupants in a rental unit;*

*(d) the tenant or a person permitted on the residential property by the tenant has*

*(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, or*

*(iii) put the landlord's property at significant risk;*

*(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that*

The landlord testified that he issued the notice on second hand information that he received from other tenants and neighbors, to which the tenant adamantly disputed. As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the landlord must prove their claim. When one party

provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The landlord did not have any supporting documentary evidence, witness statements or witnesses attend this hearing. Based on the insufficient evidence before me, the landlords application is dismissed.

### Conclusion

The One Month Notice to End Tenancy for Cause dated May 16, 2017 is set aside. The notice is of no force and no effect. The tenancy continues.

The landlords' application is dismissed in its entirety

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 05, 2017

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Residential Tenancy Branch