



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOMELIFE BENCHMARK REALTY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes: CNC OPC SS LAT OLC FF

### **Introduction:**

The tenant attended and gave sworn testimony. He made two applications which are both being heard today; the first is to cancel a One Month Notice to End Tenancy for Cause pursuant to section 47 of *The Residential Tenancy Act* (the Act) dated July 18, 2017 to be effective September 30, 2017, and the second to obtain orders that the landlord obey the Act and gave legal notice before entering his unit pursuant to section 29 of the Act and to gain permission to change the locks pursuant to section 31. The landlord did not attend. The tenant said he was served with a One Month Notice to End Tenancy for Cause dated July 18, 2017 to be effective September 30, 2017 by registered mail. It was not supplied in evidence. He said he served the landlord with both applications by registered mail and the agent acknowledged receipt by email. I find the documents were legally served pursuant to sections 88 and 89 of the Act. The tenant said that he has subsequently been served with a Two Month Notice to End Tenancy for landlord's use of the property.

**Issues:** Application 1: Is the tenant entitled to any relief?

Application 2: Has the tenant proved on a balance of probabilities that the landlord is entering his suite illegally without legal notice? Is he entitled to change the locks?

### **Background and Evidence:**

Only the tenant attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. He said the tenancy began in May or June 2014, rent was \$1600 a month and is currently \$1659 a month and a security deposit of \$800 was paid. The tenant said the landlord served the Notice to End Tenancy pursuant to section 47 for the following reasons:

- a) There are an unreasonable number of occupants in the unit;
- b) The tenant is late in paying his utility bill; and
- c) The tenant has not done required repairs.

The tenant testified that he is the only resident in the home although his brother visits him for short periods of time. He said he pays the City the water bill and he has never received a demand letter from the landlord to pay the bill, although he is sometimes a bit late. He said he has no idea what the landlord means about repairs. He said there was a brown spot on the lawn from a pool and he fixed and reseeded that two years ago. He also had some construction debris in front and some cars but that is no longer the case.

In respect to his second application, he said the landlord has entered his home several times without notice. The landlord posts a Notice of Entry on his door and then enters without allowing the 3 days for deemed receipt of the Notice pursuant to section 90 of the Act plus the additional 24 hours pursuant to section 29. He requests that the landlord be ordered to comply with the Act. He said he no longer asks to have locks changed.

No documentary evidence was submitted by either party to support the applications.

**Analysis:**

The Notice to End a Residential Tenancy is based on cause pursuant to section 47 of the Act. The Residential Tenancy Act permits a tenant to apply to have the Notice set aside where the tenant disputes it. I find the tenant's evidence credible that the landlord does not have cause to end his tenancy. He explained the situations in a clear and honest manner. The landlord did not attend to support the Notice to End Tenancy for cause. I therefore set aside the Notice to End Tenancy dated July 18, 2017 as sufficient grounds to end the tenancy were not proven on the balance of probabilities. The tenancy is continued.

I find the weight of the evidence is that the landlord's agent is entering his home illegally. I note the agent is a member of a professional company who should know the provisions of the Act. I direct the agent's attention to section 29 of the Act regarding the necessary 24 hour notice of entry and section 90 (c ) of the Act that provides a document posted on the door is deemed to be received on the third day after posting. In essence, this would mean the agent must post Notices of Entry at least 4 days ahead to conform to section 29 of the Act.

In respect to the subsequent service of a Two Month Notice to End Tenancy for Landlord's use of the Property, I advised the tenant that he must make another application to deal with that. According to the Principles of Natural Justice, the landlord must have notice if the tenant is applying to cancel it. I find the tenant has not made

application to this date so the landlord has had no notice of the tenant's intentions with respect to the two month Notice.

**Conclusion:**

I set aside and cancel the One Month Notice to End Tenancy dated July 18, 2017. The tenancy is continued. The tenant is successful on both applications so I find he is entitled to the filing fees for both (2x\$100), that is \$200.

**I HEREBY ORDER THE LANDLORD TO COMPLY WITH SECTIONS 29 AND 90 OF THE ACT WHEN GIVING NOTICES TO THE TENANT AND NOT TO ENTER THE TENANT'S HOME WITHOUT SUFFICIENT NOTICE, EXCEPT IN CASES OF EMERGENCY.**

**I HEREBY ORDER THAT THE TENANT MAY RECOVER HIS FILING FEE BY DEDUCTING \$200 FROM HIS RENT.**

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: August 31, 2017

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Residential Tenancy Branch