



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding VIEWMOUNT SUITES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            CNC, MT, OLC, FF

### Introduction

The tenant applies to cancel a one month Notice to End Tenancy for cause dated and received May 26 2017 and for more time to do so. He also seeks an extension of time to make his application.

The Notice alleges that the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant. Such grounds, if proved, are lawful grounds for ending a tenancy under s. 47 of the *Residential Tenancy Act* (the “Act”).

### Issue(s) to be Decided

Are there exceptional circumstances warranting an extension of time? If so, does the evidence presented during the hearing establish grounds for ending this tenancy?

### Background and Evidence

The rental unit is a one bedroom apartment in a three storey, 54 unit apartment building.

The tenancy started in November 2013. There is a written tenancy agreement showing Mr. S.G. to be the tenant's landlord. The rent is \$770.00 per month (including parking) due on the first of each month. The landlord holds a \$375.00 security deposit.

The tenant is 40 years old. His sister represented him at this hearing. He is learning disabled and cannot deal with complicated matters. He came to her about the Notice only after a few days had passed and as a result this application was made. It was made two days after the ten day period permitted by s. 47 of the *Act*.

The landlord opposes any extension of time to apply.

It is not disputed that the tenant has been a good tenant, paying rent and causing no disturbance.

However, he has been criminally charged with three counts of a crime involving child pornography.

He has been released on bail with conditions including:

- a) Not to have a data plan on his cell phone,
- b) No access to the internet,
- c) Not be alone with any person under the age of 16,
- d) May have incidental contact with persons under the age of 16 in a public place but must not engage them in conversation unless in the course of employment,
- e) Not to attend at any public parks,
- f) Not to accept employment or to volunteer for activity involving control or supervision or working with any child under the age of 16.

No trial date has been set.

As a result of the charges and the conditions of release, agents of the justice system have attended at apartment complex, identified the tenant to the occupants and made them aware of the matter. The occupants of the building, which houses a significant number of children under the age of 16, are extremely upset and concerned about having the tenant living in their midst.

There is no indication that the tenant has had any inappropriate contact or has breached any of the conditions of his release.

## Analysis

### Extension of Time

I grant a two day extension of time to permit the tenant's application. The tenant's sister presents undisputed evidence of the tenant's extraordinary circumstances causing the short delay. The landlord is not prejudiced by the delay other than having to present evidence to prove the grounds for the Notice.

### The Notice

The ending of a tenancy is a very serious matter. A landlord called on to justify an eviction Notice will be required to present clear and cogent evidence. The landlord will be required to strictly follow the rules permitting and eviction.

There are two significant flaws in the Notice to End Tenancy in issue in this matter.

First, the written tenancy agreement identifies Mr. S.G. as the tenant's landlord but the Notice does not come from him or from anyone or entity identified as being his agent.

Second, the landlord has failed to complete the "Details of Dispute" area of the Notice so as to provide the tenant with some particulars of what illegal activity is alleged and particulars of who has been adversely affected and how.

Despite these flaws there is one overriding fact that decides the matter: the tenant has not been proved to have engaged in any illegal activity. He has not been convicted of any offence and the landlord did not present evidence to support a finding of illegal activity other than the fact of the charges and the attendance of the justice system representatives. It should not need to be pointed out that charging a person with an offence is not a finding of guilt.

Residential Tenancy Policy Guideline 32, "Illegal Activity" provides that the landlord must prove the fact of the illegal activity on a balance of probabilities. The landlord has failed to do so at this hearing.

The court, in granting the tenant bail on the terms and conditions it did, made the implicit determination that so long as those conditions are met, the tenant is not a serious risk to the health, safety or lawful rights of the public, including the other occupants of this apartment building. The evidence presented at this hearing does warrant a review of that determination.

If the tenant breaches the conditions of his bail it is fair to assume he will not be frequenting his rental unit.

There was no evidence or submissions from Ms. A. regarding a compliance order and so that request is dismissed.

Conclusion

The application is allowed. The Notice to End Tenancy dated May 26, 2017 is hereby set aside.

As the tenant has been successful he is entitled to recover the \$100.00 filing fee for this application. I authorize him to reduce his next rent due by \$100.00 in full satisfaction of the fee.

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 02, 2017

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Residential Tenancy Branch