



# 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 Cause pursuant to section 55 and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The tenant and his assistant attended the hearing. The landlord testified that the 1 Month Notice to End Tenancy for Cause ("the 1 Month Notice") was issued by posting the notice on the rental unit door on May 31, 2017. The tenant confirmed that he received the 1 Month Notice but testified that he had been out of town and received the notice to end tenancy approximately 2 months ago (July 2017).

Based on all of the evidence before me, I find that the tenant was sufficiently served with a 1 Month Notice in accordance with the Act on July 5, 2017. I note that the 1 Month Notice submitted as evidence for this hearing is a dated version of the Residential Tenancy Branch 1 Month Notice. I have reviewed the 1 Month Notice and find that it sufficiently complies with the Act providing the details required to inform the tenant of the reason for the end of the tenancy as well as the date that the tenant is required to vacate the rental unit. Given the tenant's presence at this hearing and his understanding of the claim against him, I find that this matter can proceed without prejudice to either party. The tenant provided extensive response to the landlord's application with approximately 76 pages of material.

### Issue(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?

### Background and Evidence

This tenancy began on March 1, 2013 with a verbal, month to month tenancy agreement between the parties. The tenant currently pays \$880.00 rent on the first of each month. The landlord continues to hold a \$430.00 security deposit paid by the tenant at the outset of the tenancy. At this hearing, the parties agreed that the tenant did not pay a pet damage deposit at the outset of the tenancy because, at that time, he did not have a dog. The landlord applied for an Order of Possession for Cause and to recover his filing fee for this application.

On July 5, 2017, the landlord filed an application for an Order of Possession for Cause. A copy of the 1 Month Notice was submitted for this hearing with an effective date of March 31, 2017. In that Notice, requiring the tenant to end this tenancy by July 3, 2017, the landlord cited the following reasons for the issuance of the Notice:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*

and,

*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 or the landlord;*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The landlord testified that the police had been to the property on several occasions with respect to the tenant's behaviour towards other tenants and community members. However, the landlord did not submit any police reports or other documentary evidence to provide official evidence that the tenant has engaged in illegal activity.

The landlord provided complaint letters from 8 tenants in the residential premises. Those letters stated that the tenant;

- has a dog who challenged other dogs and is intimidating and that tenant has seen the dog bite someone;
- talks loudly and has loud visitors as well as yells at his dog;
- harassed a person doing laundry after laundry hours;
- leaves beer cans outside and fixes his motorcycle on the property;

- cut the cords of the washing machine after someone used it too late at night; and
- failed to mow as per his agreement regarding the back yard.

The letters submitted by the landlord as evidence of complaints against the tenant were dated from March 2014 to August 2016. There was only one letter of complaint from 2016. The tenant provided undisputed testimony that some of the letters are from tenants who no longer live in the residential premises and at least one other tenant was evicted from the residential premises.

The landlord did not submit copies of warning letters issued to the tenant by the landlord. The landlord testified that, over the course of this tenancy, he has spoken to the tenant about his behaviour in the residential premises several times and he provided some letters of warning in 2016. The landlord testified that he has not provided letters to the tenant in 2017. He testified that he has given up as the tenant just does whatever he wants to do.

The landlord provided extensive testimony regarding the tenant's dog. He testified that the dog barks excessively, that the dog has intimidated neighbours in the building and that the dog prevents neighbours from other residences in the area from cutting through the residential grounds. Much of the landlord's testimony was based on information provided to him by 2 or 3 other residents in the residential premises. The landlord was unable to provide a timeline for these verbal complaints. The landlord testified that he had no personal experience with the dog and, in fact he had no personal experiences of the tenant's disruptions as alleged. The landlord testified that, as far as he is aware, the dog is not leashed and runs free from the tenant's ground floor apartment and the grounds outside of the tenant's patio.

The landlord testified that he permitted the tenant to erect an outdoor patio – he submitted photographs of a gazebo type outdoor patio set-up. The landlord testified that the tenant has created a garden space and patio set-up that has become much larger than was originally agreed to. The landlord indicated that it is an obstruction to the other occupants of the rental unit and blocks a fire exit. The landlord submitted very dated (3-5 years old) fire inspection reports that do not refer directly to the area outside of the tenant's residence. One report submitted was dated prior to the start of this tenancy. Furthermore, the landlord testified that the tenant parks his motorcycle in his backyard and sits on the front steps of the residence, drinks beer and yells at people walking by.

The tenant denied the allegations made by the landlord. He acknowledged that he had an issue with one neighbour in 2015 but that neighbour was ultimately evicted from the

premises almost 2 years ago. The landlord did not dispute this testimony. The tenant submitted letters from 11 residents in the rental premises as well as several letters of support from neighbours in the residential premises and in nearby residences. The tenant testified that he doesn't both his neighbours and, in fact, his garden is a common area that has vegetables for his neighbours and a place for them to meet/visit. He testified that he has never been the subject of a citation or inspection concerning a fire exit.

The tenant argued that the landlord's submissions about his dog but that there was no mention of the dog in the original application or in the materials submitted by the landlord. He argued that the Act requires that he have full particulars prior to the hearing in order to respond to the claims made by the landlord with respect to the possible end of his tenancy. He testified that his dog goes to daycare every day during work hours and that his dog is not aggressive.

The tenant's assistant at this hearing gave brief supporting testimony that, in the time she has known the tenant, she has not witnessed any animosity with the other residents in the building. She testified that people come to the tenant's garden, visit him and that his dog is well behaved and trained.

The landlord stated that the tenant bought people's witness statements by giving them vegetables from his garden.

### Analysis

I note that I have only partially repeated the evidence of the landlord and the tenant's response to this application. I have repeated the most relevant information provided with respect to the above allegations. In an application for an Order of Possession for Cause, the applicant/landlord must prove, on a balance of probabilities prove the allegations of misbehaviour by the tenant.

With respect to the ground that the tenant has engaged in illegal activity, "illegal activity" would include a serious violation of federal, provincial or municipal law. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property. The party alleging the illegal activity (in this case, the landlord) has the burden of proving that the activity was illegal. The landlord made reference to incidents involving police presence but he submitted insufficient documentary evidence to verify police attendance to the residential premises because of the activities of the tenant. As

the landlord has not provided any official documents or other evidence to show that the tenant has engaged in illegal activity, I dismiss this portion of the landlord's application.

With respect to the ground that the tenant has **significantly** interfered or unreasonably disturbed another occupant or the landlord OR **seriously** jeopardized the health or safety or lawful right of another occupant or the landlord, I find that the landlord had insufficient evidence to support this ground to end tenancy. I find the evidence submitted by the landlord to be dated and therefore limited in its usefulness in determining whether the tenant is currently interfering in some manner with other occupants or the landlord. Furthermore, I find that the tenant has submitted rebuttal evidence that suggests, if there were disturbances in the past, there has been rehabilitation and the previous complaints made to the landlord no longer apply.

When a landlord wishes to rely on these grounds for Cause to end the tenancy (significant interference and serious jeopardy to health, safety or a lawful right), the applicant/landlord must show that there was interference or disturbance to another party in the residential premises or actions that have resulted in jeopardy to another resident's health safety or other right. The landlord must also show that the interference was **significant** or **serious** in nature.

The landlord's only evidence with respect to the allegedly bothersome dog is very dated complaint letters from approximately 2-3 years ago. The landlord was unable to specify or provide sufficient evidence that the tenant's dog has been the subject of recent complaints or problematic interactions with the neighbours. I dismiss the landlord's contention that the tenancy should end based on complaints about the dog.

The landlord provided letters of complaint regarding unruly behaviour or disruption to other tenants by yelling from the front steps, preventing people from passing through the property or by noise off of the tenant's patio area at late hours. However those letters are very dated and contradicted by the documentary evidence of the tenant – letters from building neighbours in support of his continued residence in the rental unit.

As the landlord's evidence before me is largely based on dated materials and unproven allegations, I find that the landlord has not met the burden of proof required to show that this tenancy should end. Therefore, I dismiss the landlord's application for an Order of Possession. As the landlord was unsuccessful in his application, I find that the landlord is not entitled to recover his filing fee.

Conclusion

I dismiss the landlord's application in its entirety. The tenancy shall continue.

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: September 25, 2017

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Residential Tenancy Branch