



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MT, CNC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order for more time to apply to cancel a notice to end tenancy - Section 66;
2. An Order cancelling a notice to end tenancy -Section 47; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matters

The Landlord agrees that the Tenant was not given a copy of the evidence package provided to the Residential Tenancy Branch for this hearing. The Landlord argues that she could not give the Tenant a copy of the evidence as she was late and that she did not know where to give it to the Tenant. The Landlord states that she was late because the Tenant did not give her any document made out by the RTB and that the Tenant only provided letters and “such” to the Landlord while the Landlord was at her church. The Tenant states that he did provide the Landlord with all the documents in one package. The Tenant counted the pages and described the contents of the package. It was noted that a couple of pages of the Tenant’s evidence described by the Tenant were not included in the materials received by the RTB.

Rule 3.15 of the RTB Rules of Procedure provides that evidence that is intended to be relied on at the hearing must, inter alia, be served on the applicant. Based on the undisputed evidence that a copy of the Landlord's evidence was not provided to the Tenant, I decline to consider this evidence. The Parties were given opportunity to provide oral evidence on the contents of their missing or unserved evidence.

#### Issue(s) to be Decided

Does the Tenant require more time to make its application?

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of the filing fee?

#### Background and Evidence

There is no written tenancy agreement. The Parties are mother and son. The Landlord, the mother, states that the tenancy started in 2007 or 2008. The Tenant states that the tenancy started in 2006. The Parties agree that the Tenant currently pays \$1,037.00 per month for rent and the Tenant states that the Landlord illegally raised the rent to this amount in April 2017. The Landlord states that rent is payable on the first day of each month. The Tenant states that when the Tenant first moved into the unit no rent was payable for the first 6 months while the Tenant was working on renovations to the unit and that thereafter there was no set day for rent to be paid. The Landlord states that the Tenant did pay rent for the first 6 months that he lived in the unit but that the Tenant had worked on the unit prior to moving into the unit.

The Tenant provided no copy of the notice to end tenancy that is being disputed. The Landlord states that the Tenant was served with a one month notice to end the tenancy for cause (the "Notice") dated August 23, 2017 by registered mail on August 23, 2017. The Tenant states that it received the Notice within 5 days of that date and that he does not need more time to make the application to dispute the Notice as indicated in the application. The Tenant made its application on September 1, 2017. The Parties

confirm that the Notice indicates several reasons for its issuance and the Landlord also attached a detailed description of the actions of the Tenant that the Landlord claims supports the end of the tenancy. The Notice indicates that the Tenant:

- is repeatedly late paying rent;
- or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property;
- or a person permitted on the residential property by the tenant has engaged in illegal activity that has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord; and
- has not paid the pet deposit.

The Landlord states that the Tenant always paid rent consistently on the first of the month, except when he was late. The Landlord states that the Tenant paid by email transfer and that she took this into account to accept late rent. The Tenant states that the missing pieces of its evidence include a letter in which the Landlord confirms with the Tenant that it is okay to pay the rent mid-month. The Tenant states that there was no stated or agreed date for the payment of rent.

The Landlord states that the Tenant brought a pet into the unit 3 years ago with the Landlord's permission and that the Landlord just recently asked the Tenant to pay a pet deposit. The Landlord states that the Tenant has not paid the pet deposit. The Landlord states that the Tenant has been selling marihuana and that the Landlord has no evidence of such activity. The Landlord states that the house reeks. The Tenant vehemently denies selling marihuana. The Landlord states that although she has accounting records of the payment of rents the Landlord did not expect matters would progress to this hearing and that she would need evidence to support reasons to end the tenancy. The Landlord states that she is frustrated as she had asked the Tenant "nicely to please leave because I cannot afford to rent at this rate". The Landlord states that she cannot sell the unit as the mortgage is higher than the value of the unit. The Tenant states that the whole reason for the Notice is due to his mother's desire to obtain more rent. The Tenant provides emails between the Parties and the Tenant submits

that these emails show the real reason the Landlord wants the Tenant to move out. The Tenant submits that none of the reasons on the Notice are therefore valid.

### Analysis

Section 47(4) of the Act provides that a tenant may dispute a notice to end tenancy for cause by making an application for dispute resolution within 10 days after the date the tenant receives the notice. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Based on the undisputed evidence that the Notice was served by registered mail on August 23, 2017 I find that the Notice is deemed to have been received on August 28, 2017. As the Tenant made its application on September 1, 2017 I find that the Tenant made its application within the time allowed and I dismiss the claim for more time.

Section 20 of the Act provides that a landlord must not require a pet damage deposit at any time other than when the landlord and tenant enter into the tenancy agreement, or if the tenant acquires a pet during the term of a tenancy agreement, when the landlord agrees that the tenant may keep the pet on the residential property. Based on the Landlord's evidence of agreement for the pet three years ago I find that the Landlord may not now seek or require a pet deposit. The Landlord may therefore not end the tenancy for this reason.

Where a notice to end tenancy comes under dispute, the landlord has the burden to prove, on a balance of probabilities, that the tenancy should end for the reason or reasons indicated on the Notice and that at least one reason must constitute sufficient cause for the Notice to be valid. Based on the Landlord's admission that she needs more rent from the unit, given the lack of supporting evidence for the illegal activity and late rent payments, I find that the only disturbance caused by the Tenant is his refusal to move out of the unit so that the Landlord can obtain higher rent. This is not a valid

reason to end the tenancy. As such I find that the Notice is not valid and that the Tenant is entitled to its cancellation.

As the Tenant has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this from future rent payable in full satisfaction of this claim.

### Conclusion

The Notice is cancelled and the tenancy continues.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims 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: October 06, 2017

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Residential Tenancy Branch