



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOME LIFE PROPERTY MANAGEMENT  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes

CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") to cancel the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The personal landlord BB (the "landlord") primarily spoke for both himself and the corporate landlord. The tenant primarily represented himself with the assistance of his advocate.

As both parties were in attendance I attempted to confirm service. The parties confirmed receipt of the landlord's 1 Month Notice and the tenant's application for dispute resolution. Based on the undisputed testimony of the parties I find that the 1 Month Notice and application for dispute resolution were duly served in accordance with sections 88 and 89 of the *Act*.

The landlord testified that they served their evidence on the tenant by registered mail sent on October 3, 2017. The tenant denied receipt of the landlord's evidentiary materials. The landlord provided a Canada Post tracking number for their evidence package. I find that the landlord's evidence was deemed served on the tenant in accordance with sections 88 and 90 of the *Act* on October 8, 2017, five days after mailing. Rule 3.15 of the Rules of Procedure provides that the respondent's evidence must be received by the applicant no less than 7 days before the hearing. I find that the deemed service date of the landlords' evidence does not meet the requirement of the Rules of Procedure.

As the tenant testified that they had not received the landlord's evidence, I advised the parties that I would only consider those pieces of evidence included in the landlord's materials which the tenant confirmed having received on prior occasions. I have taken this approach after considering the guidance provided by Rule 3.17 of the Rules of Procedure.

Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Background and Evidence

This periodic tenancy began in November, 2016. The monthly rent is \$650.00 and a security deposit of \$325.00 was paid by the tenant at the start of the tenancy.

The landlord said that they believe the tenant is engaging in illegal drug activity in the rental unit. The landlord said that they have received complaints from other occupants of the rental building about the activities in the rental unit. There are individuals coming and going at odd hours, guests stay for indeterminate periods, and there are loud gatherings in the rental unit or the parking lot of the building. The landlord testified that he witnessed someone in the rental unit who appeared to be under the influence of narcotics. The landlord said that he believes the tenant allows others to stay in the rental unit overnight or for extended periods of time without the landlord's authorization.

The landlord said that there are several other units in the rental building that are also believed to be involved in illegal activities. The landlord said there is one individual who comes regularly to the rental building who they believe is supplying drugs for distribution from the rental unit. The individual comes to the rental building using different vehicles which the landlord finds suspicious. The landlord testified that they have received emails from an occupant in a neighboring building that someone comes by the rental unit frequently.

The landlord testified that on July 12, 2017 police attended at the rental unit with a search warrant and retrieved several items that were identified as stolen goods.

Analysis

Section 46 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord has identified the following reasons for issuing the 1 Month Notice:

- The tenant has allowed an unreasonable number of occupants in the unit;
- The tenant or a person permitted on the property by the tenant has:

- significantly interfered with or unreasonably disturbed another occupant;
  - seriously jeopardized the health or safety or lawful right of another occupant;
  - put the landlord's property at significant risk
- The tenant has engaged in illegal activity that has or is likely to:
  - Damage the landlord's property;
  - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;
  - Jeopardized the lawful right or interest of the landlord or another occupant.

The landlord testified that there are illegal activities being conducted in the rental unit that should give rise to an end of this tenancy.

I find, on a balance of probabilities, that the landlord has not established cause for ending this tenancy. I find there is insufficient evidence to conclude that the landlord's version of events is what occurred. I find the landlord's testimony that there are other people living in the rental unit to be insufficient to conclude that there are additional occupants. Neither party submitted a copy of a written tenancy agreement into evidence. There was no testimony regarding the size of the rental unit and what an unreasonable number of people may be. I find that the evidence submitted is insufficient to conclude that the tenant has allowed an unreasonable number of occupants in the rental unit.

I find that the landlord's testimony regarding the tenant's activities to be insufficient to conclude that there has been significant interference or unreasonable disturbance of other occupants. The landlord did not submit into written evidence any statements from other occupants or call any witnesses. I find the landlord's testimony stating that he has received complaints to be insufficient evidence to conclude that there has been an unreasonable disturbance of other occupants of the rental building. I find that the landlord has not shown on a balance that the tenant or the tenant's guests have jeopardized the health or safety of other occupants or put the property at significant risk.

The landlord's suspicions and conjecture is insufficient to conclude that the tenant or a person permitted on the property by the tenant is engaging in illegal activity. I find the landlord's testimony that the tenant entertains frequent guests and that some individuals only stay for a brief period of time to be insufficient to leap to the conclusion that the tenant is engaging in illegal activities.

I accept the undisputed evidence that a warrant to search the rental unit was issued and several items believed to have been stolen were retrieved from the rental unit. I do not find that there is sufficient evidence to conclude that the tenant or the tenant's guests have engaged in illegal activity. I note that the copy of the search warrant submitted into written evidence does not identify any party but merely allows for the search of the premises in relation to an ongoing investigation. I find that even if there is evidence that the tenant or the tenant's guests have engaged in illegal activities there is insufficient evidence that these activities have or are likely to

damage the property, adversely affect the quiet enjoyment of other occupants or jeopardize the lawful right of other occupants. Illegal activity does not automatically give rise to grounds for issuing a notice to end tenancy if there is no evidence showing that the activity affects the tenancy in the ways listed.

I find that both individually and cumulatively the landlord has failed to show that there are grounds for ending this tenancy. Therefore, the tenant's application is allowed.

### Conclusion

The tenant's application to cancel the 1 Month Notice is allowed. The Notice is of no continuing force or effect. This tenancy continues until ended in accordance with the *Act*.

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 12, 2017

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Residential Tenancy Branch