



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* ("the *Act*") for:

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Landlord J.A. and the tenant attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Landlord J.A. (the landlord) stated that she would be representing the interests of both landlords.

While I have turned my mind to all the documentary evidence, including the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Tenant's Application for Dispute Resolution (the Application) personally handed to them on October 10, 2017. In accordance with section 89 of the *Act*, I find the landlord was duly served with the Application.

The tenant admitted that they did not provide their evidence to the landlord.

Rule 3.14 of the Residential Tenancy Branch Rules of Procedure (*Rules*) states that documentary evidence that is intended to be relied on at the hearing must be received by the respondent and the Residential Tenancy Branch (RTB) not less than 14 days

before the hearing. I find that the tenant did not serve the landlord in accordance with the *Rules* and that the landlord may be prejudiced by this as they did not have a chance to respond to the tenant's evidence. For this reason the tenant's evidence is not accepted for consideration with the exception being the One Month Notice, as it was provided to the tenant by the landlord and the landlord would not be prejudiced by its consideration.

The landlord testified that they served the tenant with their evidence on November 08, 2017.

Rule 3.15 of the Residential Tenancy Branch Rules of Procedure (*Rules*) states that documentary evidence that is intended to be relied on at the hearing must be received by the applicant and the Residential Tenancy Branch (RTB) not less than seven days before the hearing. I find that the landlord did not serve the tenant in accordance with the *Rules* and that the tenant may be prejudiced by this as they did not have a chance to respond to the landlords' evidence. For this reason the landlords' evidence is not accepted for consideration.

The Tenant confirmed that they received the One Month Notice on September 28, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the One Month Notice.

For the reasons noted above, I have not considered any of the documentary evidence submitted by both parties with the exception of the One Month Notice to End Tenancy for Cause. I have considered all relevant oral testimony from both parties.

#### Issue(s) to be Decided

Should the landlords' One Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to an order requiring the landlords to comply with the *Act*, regulation or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application from the landlords?

#### Background and Evidence

The landlord testified that this tenancy began on June 27, 2017, with a current monthly rent of \$800.00, due on the first day of each month. The landlord testified that they retain a security deposit in the amount of \$200.00.

A copy of the landlord's unsigned One Month Notice, dated September 07, 2017, was entered into evidence. In the One Month Notice, requiring the tenant to end this tenancy by October 30, 2017, the landlord cited the following reasons for the issuance of the One Month Notice:

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

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

*Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property*

The landlord testified that the tenant has flooded the washroom, not cleaned it up properly in a reasonable amount of time and that there is a bad smell coming from the unit which you can smell from the upper unit. The landlord further testified that the tenant does not want to buy cleaning products. The landlord also submitted that she found empty liquor bottles lying on the floor of the tenant's room when the previous co-tenant had let her into the rental unit. The landlord stated that she found socks drying on the heat register in the rental unit, which she believes is a fire hazard.

The tenant submitted that the problems with the landlord started when he came home from work at 9:00 p.m. and the landlord was washing clothes at 10:00 p.m. The tenant stated that when he addressed it with the landlord she told him that she was doing it according to the tenant's stated bedtime, which the tenant disagreed with. Tenant testified that he did clean up the flooded bathroom the night it happened, immediately upon getting home. The tenant further testified that there is no smell coming from the bathroom.

### Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47(4) 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. The tenant submitted their Application to dispute the One Month Notice on September 30, 2017. In accordance with section 47(4) of the *Act*, I find that the tenant has disputed the One Month Notice in the 10 Day timeframe allowed.

Section 52 of the *Act* provides the following requirements regarding the form and content of notices to end tenancy:

*In order to be effective, a notice to end a tenancy must be in writing and must*

- (a) **be signed** and dated by the landlord or tenant giving the notice,*
- (b) give the address of the rental unit,*
- (c) state the effective date of the notice,...and*
- (e) when given by a landlord, be in the approved form...*

I find the One Month Notice is not signed by the landlord. For this reason I find the One Month Notice does not comply with the provisions of section 52(a) of the *Act* and is not a valid notice to end tenancy.

For this reason the One Month Notice is set aside and this tenancy will continue until ended in accordance with the *Act*.

I find that the tenant has not submitted any evidence to show the hours of quiet time in their municipality, or what hours are agreed upon in the tenancy agreement, to prove their claim that the landlord is not complying with the *Act*, regulations or tenancy agreement.

For this reason I dismiss the portion of the tenant's Application, to have the landlord comply with the *Act*, regulations or tenancy agreement, with leave to reapply.

I note that the landlords should be respectful of the quiet times as posted by the municipality that the rental unit is located in.

As the tenant has been successful in the primary issue for this application, I allow them to recover their filing fee from the landlords.

### Conclusion

The tenant is successful in their Application.

The One Month Notice is set aside and this tenancy will continue until it is ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, I order that the tenant may reduce the amount of rent paid to the landlords from a future rent payment on one occasion, in the amount of \$100.00, to recover the filing fee for this application.

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: November 21, 2017

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Residential Tenancy Branch