



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated August 16, 2017 ("1 Month Notice"), pursuant to section 47; and
- authorization to recover the filing fee for this application, pursuant to section 72.

The tenant, the tenant's agent and the landlord attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenant confirmed that his agent had authority to speak on his behalf at this hearing. This hearing lasted approximately 40 minutes in order to allow both parties to fully present their submissions.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application.

The tenant's agent confirmed that she received the landlord's written evidence package on November 22, 2017, the night before this hearing. I received the evidence at the RTB on November 21, 2017. The tenant's agent confirmed that she received the evidence but did not have enough time to review it with the tenant or respond to it. She objected to me considering the evidence at the hearing and in my decision.

Rule 3.15 of the RTB *Rules of Procedure* requires the landlord, as the respondent, to submit his evidence at least seven days prior to the hearing date, not including the hearing date. During the hearing, I notified both parties that I would not consider the landlord's late written evidence package at this hearing or in my decision. I considered Rule 3.17 of the RTB *Rules of Procedure* and both parties' verbal submissions before making my decision. I find that the landlord had ample time to submit this evidence on time, given that the tenant filed his application on August 28, 2017 and the hearing

occurred on November 23, 2017, almost three months later. The landlord claimed that his father was sick so he was busy and unable to submit his evidence. I do not accept this reason, as the landlord did not submit any documentary evidence to demonstrate his father's illness for almost three months, and the landlord could have had an agent assist him with submitting evidence. I also find that the tenant did not have an opportunity to prepare for or respond to the evidence, which included a number of text messages and photographs from the landlord's surveillance camera. Accordingly, I find that it would be prejudicial to the tenant if I considered the landlord's written evidence.

The tenant confirmed receipt of the landlord's 1 Month Notice on August 16, 2017, the date that the landlord said that he posted it to the tenant's rental unit door. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on August 16, 2017.

#### Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

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

#### Background and Evidence

While I have turned my mind to the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began on October 23, 2015. Monthly rent in the amount of \$575.00 is payable on the first day of each month. A security deposit of \$287.50 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit. The rental unit is a one-bedroom, one-bathroom basement suite of a house, where the landlord lives upstairs in the same house.

The landlord issued the 1 Month Notice with an effective date of September 30, 2017, for the following reason:

- *Tenant allowed an unreasonable number of occupants in the unit/site.*

The landlord testified that the tenant's written tenancy agreement addendum indicates that the tenant is only permitted to reside in the rental unit alone. It also indicates that the tenant cannot have any other occupants and the tenant's children can only visit him during the day. He said that the tenant's agent is residing in the rental unit, staying there every night, using the landlord's internet, and increasing the utility charges which are included in the tenant's rent.

The tenant acknowledged that he was aware that he is the only person entitled to reside in the rental unit but claimed that he does not have any occupants, only one guest, who is his agent, who visits him at the rental unit. The tenant's agent maintained that she visits the tenant often because they are best friends and enjoy spending a lot of time together. She said that she stays overnight at the tenant's residence but it is not every night and she rarely stays there when the tenant is not present because the landlord makes her uncomfortable. She explained that she has her own separate residence, she pays rent for it, and she receives mail at this address. She claimed that she only had one mail package sent to the tenant's rental unit address because it was easier and closer for her to do so for that one time. She stated that she does not pay any rent towards the tenant's rent and therefore, is not defined as an occupant. She said that the landlord attempted to charge the tenant \$100.00 extra per month for an additional occupant in the rental unit but it was not paid by the tenant. She maintained that the tenant got his own internet access and password because the landlord blocked the tenant's agent from using the internet.

### Analysis

In accordance with section 47(4) of the *Act*, the tenant must file his application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on August 16, 2017 and filed his application to dispute it on August 28, 2017, the next business day when the Residential Tenancy Branch ("RTB") offices are open. Accordingly, I find that the tenant's application was filed within the ten day limit under the *Act*.

Where a tenant applies to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

I find that the landlord provided insufficient evidence to show that the tenant allowed an unreasonable number of occupants in the rental unit. The tenant only has one guest, his agent, who visits him often and stays overnight but she does not pay rent and she is

not involved in the tenancy. She has her own rental unit, for which she pays rent, and receives mail at her own permanent address.

This is a one-bedroom rental unit of approximately 500 to 600 square feet, as per the landlord's testimony. It is reasonable that two people can be accommodated in this rental unit. I do not find one additional person to be an "unreasonable" number.

Accordingly, I allow the tenant's application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated August 16, 2017, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

As the tenant was successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the landlord.

#### Guests at the Rental Unit

I caution both parties to note the following with respect to the *Act* and the *Residential Tenancy Regulation* ("*Regulation*"):

Section 30(1)(b) of the *Act* states the following:

*30 (1) A landlord must not unreasonably restrict access to residential property by  
(b) a person permitted on the residential property by that tenant.*

Section 5(1) of the *Regulation* states the following:

*Prohibited fees*

*5 (1) A landlord must not charge a guest fee, whether or not the guest stays overnight.*

The landlord cannot unreasonably restrict the tenant from having guests at the rental unit, as per section 30 of the *Act*, as noted above. The landlord cannot charge or accept fees for overnight guests, as per section 5 of the *Regulation*, as noted above.

#### Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice, dated August 16, 2017, is cancelled and of no force or effect. The landlord is not entitled to an order of possession.

This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$100.00 from his future rent payable to the landlord at the rental unit for this tenancy, in full satisfaction of the monetary award for the filing 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: November 23, 2017

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Residential Tenancy Branch