



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes: CNC, O, OLC

### Introduction:

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy
- b. An order that the landlord comply with the Act, regulations and/or tenancy agreement
- c. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

The respondent produced a letter from WGM stating he never agreed to be an applicant in this application. As a result I ordered that WGM be removed as an applicant in this application.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing was personally served AL in late September 2017. With respect to each of the applicant's claims I find as follows:

### Issues to be Decided:

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy?
- b. Whether the tenant is entitled to an order that the landlord comply with the Act, regulations and/or tenancy agreement?
- c. Whether the tenant is entitled to recover the cost of the filing fee?

### Background and Evidence:

AL has entered into a tenancy agreement in writing with the owner. She occupies the upstairs portion of the rental property. In April 2016 she rented a room in the basement to the applicant. The rent was \$565 per month. It was subsequently increased to \$585 per month. The applicant did not pay a security deposit.

The applicant has exclusive possession of a room in the basement which he uses as a bedroom. He also shares the bathroom and living room area with another tenant in the basement. For most of the tenancy he has had access to the upstairs portion of the rental property.

On June 24, 2017 AL gave the tenant notice in writing that she planned to move out of the rental property on August 31, 2017. The tenant demanded that she give him notice in the approved government form.

AL refused and he has never been served with a Notice to End Tenancy in the approved government form.

There was an exchange of correspondence. The applicant did not believe the respondent planned to move out. However, at the end of November the respondent moved out of the rental property. The applicant was able to find alternative accommodation and he has moved out. .

Whether the Residential Tenancy Branch has jurisdiction?

Section 2 of the Act provides as follows:

What this Act applies to

2 (1) Despite any other enactment but subject to section 4 [what this Act does not apply to], this Act applies to tenancy agreements, rental units and other residential property.

(2) Except as otherwise provided in this Act, this Act applies to a tenancy agreement entered into before or after the date this Act comes into force.

The definition of landlord and tenancy agreement in section 1 of the Act provides as follows:

"landlord", in relation to a rental unit, includes any of the following:

- (a) the owner of the rental unit, the owner's agent or another person who, on behalf of the landlord,
  - (i) permits occupation of the rental unit under a tenancy agreement, or
  - (ii) exercises powers and performs duties under this Act, the tenancy agreement or a service agreement;
- (b) the heirs, assigns, personal representatives and successors in title to a person referred to in paragraph (a);
- (c) a person, other than a tenant occupying the rental unit, who
  - (i) is entitled to possession of the rental unit, and
  - (ii) exercises any of the rights of a landlord under a tenancy agreement or this Act in relation to the rental unit; (my emphasis)
- (d) a former landlord, when the context requires this;

The Act defines "tenancy agreement" as

"tenancy agreement" means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit;

Section 4(c) provides:

"What this Act does not apply to

4 This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation,

After carefully considering the evidence and submission I determined the Residential Tenancy Act applies for the following reasons:

- The applicant has exclusive possession of his rental unit.
- The relationship involves the payment of rent and the use of a rental unit.
- The respondent is not the owner of the rental property. Had the respondent been an owner the Act would have excluded the application of the Act under section 4(c).
- The applicant has a tenancy relationship with the respondent AL.

Section 44 sets out how a tenancy can come to an end.

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

- (i) section 45 [tenant's notice];
- (i.1) section 45.1 [tenant's notice: family violence or long-term care];
- (ii) section 46 [landlord's notice: non-payment of rent];
- (iii) section 47 [landlord's notice: cause];
- (iv) section 48 [landlord's notice: end of employment];
- (v) section 49 [landlord's notice: landlord's use of property];
- (vi) section 49.1 [landlord's notice: tenant ceases to qualify];
- (vii) section 50 [tenant may end tenancy early];

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;

(c) the landlord and tenant agree in writing to end the tenancy;

(d) the tenant vacates or abandons the rental unit;

(e) the tenancy agreement is frustrated;

(f) the director orders that the tenancy is ended.

If the landlord is seeking to end the tenancy the landlord must have grounds and must give a Notice to End Tenancy in the approved government form as set out in section 52 of the Act.

The landlord failed to use the approved government form.

#### Analysis:

The applicant and the respondent have both vacated the rental property and neither seeks to reinstate the tenancy. The application to cancel a Notice to End Tenancy is moot..

I determine Tenant was in his legal rights to file this application. As a result I ordered that the respondent AL pay to the applicant JL the sum of \$100 for the cost of the filing fee.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

**This decision is final and binding on the parties.**

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: December 06, 2017

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Residential Tenancy Branch