



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNR, CNC

### Introduction

This hearing convened as a result of Tenant's Application for Dispute Resolution, filed November 10, 2017, wherein the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued on November 1, 2017 (the "1 Month Notice"). By Amendment filed December 14, 2017, the Tenant also sought an Order canceling a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities issued on December 10, 2017 (the "10 Day Notice").

The hearing was conducted by teleconference on January 25, 2018. Both parties called into the hearing and were given a full opportunity to be heard, to present their affirmed testimony, to present their evidence orally and in written and documentary form, and make submissions to me. The Landlord was assisted by a translator and the Tenant was assisted by a legal advocate.

### Preliminary Matter

On January 23, 2018, only two days prior to the hearing, the Landlord submitted their evidence. The *Residential Tenancy Branch Rules of Procedure* provide that a respondent must serve their evidence no later than seven days prior to the hearing; consequently, I did not consider this evidence in making my Decision.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the respective submissions and or arguments are reproduced here; further, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Should the 1 Month Notice be cancelled?
2. Should the 10 Day Notice be cancelled?

### Background and Evidence

*Residential Tenancy Branch Rules of Procedure* provide that when a Tenant applies to dispute a notice to end tenancy, the Landlord must present their evidence first as it is the Landlord who must prove the reasons for issuing the notice. The standard of proof is on a balance of probabilities.

The Landlord confirmed that there is no written tenancy agreement in place; however, he testified that the tenancy began February 1, 2017 and that monthly rent is payable in the amount of \$800.00 on the first of the month.

The Landlord, his wife, his mother, and his two children, 9 and 13 years old respectively, live in the upper unit. The rental unit is located in the basement of the Landlord's home.

The Landlord issued the 1 Month Notice on December 1, 2017. He confirmed that it was personally served on the Tenant on December 1, 2017. The reasons cited in the 1 Month Notice are as follows:

- The Tenant is repeatedly late paying rent.
- The Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord;
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and,
  - Put the landlord's property at significant risk.
- The 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

In terms of late payment of rent the Landlord testified that the Tenant was late paying rent as follows:

- September rent was paid on September 15, 2017;
- October rent was paid on October 27, 2017; and,
- November rent and December rent was paid approximately December 10, 2017.

In terms of the balance of reasons set forth on the 1 Month Notice, the Landlord testified that the Tenant is an alcoholic and when he drinks he gets very aggressive, damages the property, and puts the property at risk. The Landlord stated that the Tenant has tried to grab the Landlord and the Landlord's children when he is intoxicated and then he says he does not remember. The Landlord testified that the Landlord's children are afraid of the Tenant. The Landlord stated that

when the Tenant is sober he is a nice guy, but when he is drunk he has no control and then he says he doesn't remember.

The Landlord also stated that the Tenant leaves his rental unit door wide open which puts the Landlord's property at risk.

The Landlord also testified that the Tenant urinates on the floor when he is drunk because he is too drunk to make it to the bathroom. He claimed that the Tenant then uses the heater to dry the carpet and as he is not in his right "sense" the Landlord is worried he is going to burn the house down because the heater is left on. The Landlord's Translator stated that approximately three or four days before the hearing, the Landlord called the police to break open the door because he left the heater on and the Landlord could not get into the rental unit.

The Landlord also stated that the Tenant also collects garbage, such as boxes and broken appliances, and this has accumulated in the rental unit to such an extent that there is likely two truckloads of refuse in the rental unit.

The Tenant's advocate stated that the Landlord did not provide any particulars of the allegations, as the "Details of Cause" section on the 1 Month Notice was not completed. As such, she submitted that the Tenant had to speculate what the issues were when making his application for Dispute Resolution. The Tenant's advocate confirmed that the Tenant denies the entirety of the allegations made by the Landlord in their submissions at the hearing.

In response to the Landlord's submissions, the Tenant testified as follows.

In response to the Landlord's claim that he is repeatedly late paying rent, the Tenant confirmed that he is to pay his rent on the 1<sup>st</sup> of the month. He testified that he paid his September rent on the 1<sup>st</sup>, although the Landlord refused to provide him with a receipt. The Tenant testified that he paid his October rent on the 1<sup>st</sup> and again the Landlord refused to issue a receipt. The Tenant stated that he paid his November and December rent by money order, as his rental unit was broken into in November and his money was taken. He stated that because the Landlord alleged he did not pay his September and October rent on time, he sent the November and December payment by registered mail. He claimed to have paid the outstanding amount within five days of receipt of the 10 Day Notice.

The Tenant denied all the allegations made by the Landlord in support of the 1 Month Notice. He stated that it is the Landlord who drinks excessively and alleged that he drinks every day. He stated that the Landlord routinely comes downstairs to drink with the Tenant and brings the children down to the rental unit, such that it is not possible that the children are afraid of him. The Tenant further stated that he has told the Landlord that he does not wish to drink in front of the children.

The Tenant stated that he did not urinate on the floor. He admitted that he has left dirty clothes on the floor but has not urinated on the floor as alleged.

The Tenant denied the Landlord's allegation that he has put the rental property at risk. He Tenant stated that on January 18, 2018 he left approximately 3:00 p.m. to go look at other possible rental accommodation as he was not sure what would happen with his application. He said that he had just been at the recreation centre and left his towels to dry in the rental unit. He also said that the Landlord has a key and could have gotten into the rental unit and did not need to call the police.

The Tenant denied that he has collected refuse in his rental unit.

The Tenant further testified that he believes the Landlord wants to evict him due to personal issues relating to their vehicles and the Tenant's unwillingness to participate in a fraudulent insurance claim on behalf of the Landlord.

### Analysis

After consideration of the evidence before me, the testimony of the parties and on a balance of probabilities I find as follows.

**I find that the 1 Month Notice should be canceled.** My reasons follow.

The Tenant's advocate aptly noted that the Tenant was provided with insufficient particulars as to the reasons the Landlord wished to end the tenancy. As noted, the "Details of Cause" section was left blank such that the Tenant was forced to speculate as to why the Landlord was evicting him. The Landlord is obligated to provide such information to the Tenant as one of the principles of natural justices is that a party to a dispute has the right to know the specifics of the allegations made against them. In this case, I find the Landlord failed to provide the Tenant with sufficient information as to the reasons the 1 Month Notice was issued.

Similarly, while it can be difficult to reconcile conflicting testimony, it must be remembered that it is the Landlord who bears the burden of proving the reasons cited on the Notice.

The Landlord alleges the Tenant was late paying his rent four consecutive times. The Tenant denies he was late paying in September and October, claiming he paid on the 1<sup>st</sup> of the month, but the Landlord refused to issued receipts to him. The Tenant admitted he was late paying in November and December 2017.

*Residential Tenancy Policy Guideline 38—Repeated Late Payment of Rent* provides that three late payments are the minimum number sufficient to justify a 1 Month Notice. Without further corroborating evidence, I am unable to find that the Tenant was repeatedly late paying rent.

The Landlord alleges the Tenant drinks excessively, becomes aggressive with him and his children, urinates on the floor and puts the property at risk by leaving the heater on and collecting garbage. The Tenant adamantly denies this and submits that the Landlord is making false claims due to personal issues. Without corroborating documentary evidence I am unable to reconcile the testimony of the parties. I therefore find the Landlord has failed to meet the burden of proving the reasons cited in the 1 Month Notice.

**I also find that the 10 Day Notice should be cancelled.**

The Landlord conceded that the Tenant paid the outstanding rent after receiving the 10 Day Notice. He could not testify as to when he received the funds, only to say it was "some time in December". As the Landlord could not testify as to when the Tenant paid the outstanding rent, I am unable to find that he paid outside of the strict five day deadline imposed by section 47 of the *Act*.

#### Conclusion

The 1 Month Notice and the 10 Day Notice are cancelled. The tenancy shall continue 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: January 26, 2018

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Residential Tenancy Branch