



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding ROSS HOUSE HOLDINGS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

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

- cancellation of the landlord's Notice to End Tenancy for Cause pursuant to section 47 of the *Act*; and
- the recovery of the filing fee for this application from the landlord pursuant to section 72 of the *Act*.

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.

As both parties were present, service of documents was confirmed. Landlord's agent C.H. (herein referred to as "the landlord") attended the hearing on behalf of the commercial landlord. The landlord confirmed that he was in receipt of the tenant's application materials, however the tenant had failed to include his evidence, which consisted of a one-page statement, in the package provided to the landlord. As such, I advised the parties that the tenant's one-page documentary evidence would be excluded from my consideration as it had not been served to the respondent as required by Rule 3.5 of the Residential Tenancy Branch Rules of Procedure. The tenant confirmed receipt of the landlord's ten-page evidence package. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with section 89 of the *Act*, with the exception of the tenant's documentary evidence, as noted.

As a procedural matter, I explained to both parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, I explained to both parties that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

#### Issue(s) to be Decided

Should the landlord's Notice to End Tenancy for Cause be cancelled? If not, is the landlord entitled to an Order of Possession on the basis of the Notice to End Tenancy?

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

#### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. The principal aspects of this matter and my findings are set out below.

No written tenancy agreement was submitted into evidence for this hearing. Both parties were unsure of the date when the tenancy started but the tenant provided an approximate date of 2011. The tenant stated that it was a month to month tenancy and that monthly rent of \$570.00 is due on the first of the month.

Out of respect for the witness' time, the landlord requested to allow his witness N.M. to provide his testimony at the beginning of the hearing, so that he could then be excused from the hearing.

Witness N.M, an employee of the pest control company hired by the landlord to address a bedbug issue in the rental property, provided testimony regarding the bedbug treatment protocol, dates of treatments, and efficacy of the treatments. Witness N.M. stated that he had attended the rental property on March 23, 2018 to inspect several rental units. He noted that the tenant's rental unit was heavily infested, in particular the mattress and couch. He returned on March 26, 2018 to apply a treatment and noted that the tenant had not done any of the requested preparations in advance of the treatment. On April 9, Witness N.M. stated that he returned to apply a follow up treatment and again noted that the tenant had failed to prepare his unit per the preparation instructions, however, he went ahead with the treatment application. Witness N.M. stated that there was low to medium bedbug activity, in the tenant's unit, noted during

this visit. Witness N.M. testified that he has not been called back to attend for any further treatments at the rental property.

The tenant's telephone connection experienced poor reception during the hearing and the tenant was disconnected from the teleconference at 10:15 a.m., but was able to rejoin at 10:16 a.m.

I asked if either party had uploaded a copy of the notice being disputed by the tenant at this hearing, as I could not locate it in the documentary evidence that was submitted to the dispute resolution website. I explained that an order of possession can only be granted to the landlord if the tenant's application to cancel the notice is dismissed, and the notice provided by the landlord is compliant with the form and content requirements set out in section 52 of the *Act*.

The landlord asked if not having the notice available would make it difficult to proceed. I explained that it would be very difficult for me to determine whether or not the notice was compliant with the *Act*, if it is not available to view.

At this point, the landlord advised that he was leaving the hearing and disconnected from the teleconference at 10:18 a.m.

I continued the hearing in the absence of the landlord, pursuant to Rules 7.3 and 7.4 of the Residential Tenancy Branch Rules of Procedure, which state:

**7.3 Consequences of not attending the hearing**

*If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

**7.4 Evidence must be presented**

*Evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.*

The tenant testified that he is willing to be compliant with any bedbug treatment required, however he stated that the landlord has not been compliant in providing him with proper notice when requiring access to his rental unit. The tenant stated that he disposed of the sofa, which was infested with bedbugs and has purchased a bedbug cover for his mattress. He stated he has not seen any bedbugs recently. He acknowledged that he did not follow the bedbug treatment preparation protocol in advance of the treatments. He stated that he suffers from mental health issues which

can render him debilitated at times and barely able to cope. As such, the tenant stated he has had difficulty implementing the treatment preparation protocol during these times.

The tenant testified that he has been a long-term tenant who has never received complaints against him from other tenants. He stated he is not noisy or disruptive.

The tenant alleged that about a year ago, the landlord tried to increase his rent by 40%, which the tenant refused to accept.

### Analysis

Section 47 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 stated that around the end of April 2018, he received a “notice of eviction” posted on his door. He could not recall the date that he actually received the notice as he stated he had been away from his rental unit. The tenant believed the notice was dated April 26, 2018. Section 90 of the *Act* provides that a notice served by posting on the door is deemed received on the third day after it is attached. In this case, the notice is deemed received by the tenant on April 29, 2018.

The tenant filed an application to dispute the notice on May 9, 2018. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden to prove the grounds for the notice and that the notice is compliant with section 52 of the *Act*.

Section 52 of the *Act* provides that:

- 52 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,
  - (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,

- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

In the matter at hand, the landlord has not submitted the notice to end tenancy into evidence, and therefore I am unable to determine with any certainty the grounds to end tenancy that were identified on the notice provided to the tenant, nor am I able to confirm that the notice complied with the requirements of section 52 of the *Act*.

Therefore, as a result of the lack of documentary evidence submitted by the landlord regarding the notice to end tenancy, I find that the landlord has failed to satisfy the burden of proving the grounds for ending the tenancy for cause and I allow the tenant's application to cancel the Notice to End Tenancy.

As the tenant was successful in his application, he may, pursuant to section 72 of the *Act*, recover the \$100.00 filing fee from the landlord. In place of a monetary award, the tenant may withhold \$100.00 from a future rent payment on one occasion.

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

#### Conclusion

The tenant was successful in his application to dispute the landlord's notice to end the tenancy. Therefore, this tenancy shall continue until it is ended in accordance with the *Act*.

The tenant may withhold \$100.00 from a future rent payment on one occasion in satisfaction of the recovery of 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: June 27, 2018

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Residential Tenancy Branch