



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes            CNC, OPT, MNDCT, OLC, FFT

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62;
- an Order of Possession of the rental unit pursuant to section 54; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties 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. The landlord was represented at this hearing by the landlord's daughter, LH, who gave undisputed sworn testimony and written evidence that they had been appointed with a power of attorney over the landlord's affairs. The landlord's daughter (the agent) advised that she was acting as the landlord's agent in this matter.

As the tenant confirmed that he was handed the 1 Month Notice on May 15, 2018, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*. As the agent confirmed that the landlord was handed copies of the tenant's original dispute resolution hearing package in which the tenant sought a monetary award of \$5,000.00 and the tenant's amended application in which the tenant sought a monetary award of \$35,000.00, I find that the landlord was duly served with this package and amended application in accordance with section 89 of the *Act*. Since both parties confirmed that they had received one another's written evidence, I find that the written evidence was served in accordance with section 88 of the *Act*.

### Preliminary Issues

Prior to the hearing and at the hearing, the tenant requested the issuance of a summons to the landlord's spouse, whom the tenant asserted would be able to provide sworn testimony that would be supportive of the tenant's application. As the purpose of this request was unclear and it did not appear to me that the issuance of a summons was necessary to obtain sufficient information regarding the tenant's application, I declined the tenant's request for the issuance of a summons requiring the landlord's spouse to attend and participate in this hearing. I made this decision after having reviewed the guidance provided by Residential Policy Guideline 15 regarding the factors to be considered in issuing a summons to attend a hearing.

The agent testified that she believed that some of the documents submitted by the tenant were forged documents, noting in particular Exhibit D, a tenancy agreement that was never signed by the tenant. This allegation was denied by the tenant. Since the parties did not take issue with respect to the actual Agreement that had been signed by the parties on April 22, 2017, and the current monthly rent that is paid for this tenancy, I advised the parties that any draft documents entered into written evidence by the tenant had little bearing on the issues before me. As the allegation of forged documents was not relevant to the tenant's application, I accepted no further sworn testimony in this regard from the agent.

At the beginning of the hearing, I also clarified aspects of the tenant's amended claim for a monetary award of \$35,000.00. Although the tenant did not include a Monetary Order Worksheet as part of his application for this monetary award, he did include the following written breakdown of his amended application:

Item	Amount
General Damages	\$20,000.00
Punitive Damages	20,000.00
Special Damages (Listed as \$500.00 for moving a sailboat; \$200.00 for moving cars; \$200.00 for moving scrap metal; \$344.40 for obtaining a P.O. Box)	1,244.40
<b>Total of Above Items</b>	<b>\$41,244.40</b>

In his amended application, the tenant noted that he was prepared to reduce the amount of his requested to \$35,000.00, the maximum amount for a monetary award that can be considered under the *Act*.

At the hearing, I read the parties the relevant wording of RTB Policy Guideline 16, which reads in part as follows:

***D. AMOUNT OF COMPENSATION***

*...The amount arrived at must be for compensation only, and must not include any punitive element...*

I noted that this guidance specifically prevented the tenant from obtaining a monetary award for "Punitive Damages", one of the main elements of his monetary claim.

I also reviewed the wording of Section C of Policy Guideline 16, which broke down the types of claims for damages into two categories. One of these was claims for "Nominal Damages," which was clearly not part of the tenant's claim for \$20,000.00 in "General Damages." The other category of claims for damages arising out of a tenancy is for "Aggravated Damages." This section of Policy Guideline 16 reads as follows:

*"Aggravated damages" are for intangible damage or loss. Aggravated damages may be awarded in situations where the wronged party cannot be fully compensated by an award for damage or loss with respect to property, money or services. Aggravated damages may be awarded in situations where significant damage or loss has been caused either deliberately or through negligence. Aggravated damages are rarely awarded and must specifically be asked for in the application.*

As the applicant had not specifically asked for "aggravated damages" I advised the parties that I would not be able to issue a monetary award for these types of damages, the only ones that would seem to apply to the types of damages the tenant was seeking in his application for "General Damages."

I advised the parties that I was prepared to consider the tenant's claim for \$1,244.40 in "Special Damages," but that I would have to make a determination as to whether these items listed as damages could be considered within the context of the tenant's application for a monetary award.

#### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Is the tenant entitled to a monetary award for losses and/or damages arising out of this tenancy? Should any other orders be issued with respect to this 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 all the documentary evidence, including photographs, miscellaneous documents, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant gave undisputed sworn testimony and written evidence that he first moved into a room in the landlord's home in September 2015, where he shared facilities with the landlord who lived in the remainder of the upper level of this home. His residency in this shared space was not a tenancy for the purposes of the Act. In March 2016, the tenant moved into the

separate suite in the lower level of this property. Although the landlord was hospitalized, the landlord's principal residence remains the living space above the tenant's rental suite. The agent gave undisputed sworn testimony that the landlord was discharged from the hospital during the last week in May 2018, upon the understanding that the landlord had issued a 1 Month Notice to the tenant, so as to remove a major stressor in his life.

The parties signed a month-to-month Residential Tenancy Agreement (the Agreement) on April 22, 2017, in which the tenant pays \$525.00 by the first of each month, which includes among other items hydro to this rental unit.

The landlord's 1 Month Notice seeking an end to this tenancy by June 30, 2018, identified the following three reasons for ending this tenancy:

*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;...*

*Tenant has engaged in illegal activity that has, or is likely to:...*

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;...*

In the agent's written evidence and in the agent's sworn testimony, the agent advised that she had included the third reason, outlined above, in the 1 Month Notice incorrectly. At the time the agent prepared the 1 Month Notice, the agent and the landlord were unaware that the tenant had obtained a licence to use medical marijuana. As such, there was no "illegal activity" being undertaken by the tenant and the agent withdrew this element of the 1 Month Notice.

The agent provided written evidence in the form of a June 5, 2018 letter from the Doctor in charge of Geriatric Medicine at the Hospital treating her father that since September 2016, the landlord has been diagnosed with "a major neurocognitive disorder complicated by ongoing behavioural symptoms." Given the landlord's complex health condition, this doctor noted that the landlord's medical team was recommending that the landlord have a supportive home environment with minimal stress. This doctor advised that as a condition of the landlord's recent discharge from the Hospital, "all parties involved in his care agreed to systemically avoid and eliminate all potential sources of conflict and stress to his wellbeing." In their letter, this doctor noted that "the interprofessional health care team strongly advised that the tenant residing on D's property be asked to leave." The Doctor added that the presence of this tenant on the property where the landlord resides would interfere with the landlord's care plan and would "contribute to a poorer health outcome." The Doctor noted that this request was a function of the landlord's "complex health situation and not a reflection on the tenant per se."

The agent also entered into written evidence a copy of the May 18, 2018 "warning letter", which accompanied the 1 Month Notice. This letter noted that the agent was ending the tenancy because of "the consistent issues" between her father and the tenant and that they had "no choice to end this for the health and safety of the homeowner."

in other written and photographic evidence and in sworn testimony, the agent maintained that the smoke from the marijuana that the tenant routinely smoked penetrated the building and agitated the landlord. The agent maintained that the tenant's practice of smoking just outside the door of his residence forced the landlord to refrain from using his balcony which overlooks that location.

The agent testified that the tenant's presence in the rental unit upsets her father, noting that her father is "pretty sensitive and stressed." The agent testified that noise coming from the tenant's rental unit irritates her father. The agent also noted that the tenant continues to make repairs to the property without obtaining permission from the landlord and that the tenant's actions "trigger" the landlord's dementia.

The agent's brother (DH) also gave sworn testimony as a witness at this hearing as the agent noted in her written evidence that he is a more frequent visitor to the property than the agent. He said that the 1 Month Notice was issued because of the "ongoing agitation" caused by the tenant's presence in this property. The agent's brother said that there had been many incidents around the household and that the tenant had in 2017 brought friends over who parked their recreational vehicles in the driveway for extended periods of time. Some of these incidents led to disputes as to who was responsible for paying for the use of hydro by these friends' recreational vehicles. Although DH knew that there had been recommendations by the landlord's health care professionals that stressors were to be removed from the landlord's life, he could not provide exact dates as to when this recommendation had been made by the health care professionals.

The agent also commented on some of the aspects of the tenant's monetary claim. The agent noted that the tenant had entered into an agreement with the landlord to purchase the sailboats for \$500.00. She gave undisputed sworn testimony that the tenant had paid only \$100.00 of this agreed purchase, and later decided to remove them from the premises. The agent gave undisputed sworn testimony that the tenant did not have permission to remove vehicles from the rental unit. The agent's brother also provided written evidence to support the agent's assertion in this regard. The agent confirmed that the landlord had become so agitated over receiving and forwarding mail to the tenant that the landlord had refused to accept the tenant's mail at the rental unit. The agent confirmed that the landlord would accept responsibility for a portion of the tenant's \$344.40 costs in securing a Post Office Box in lieu of direct mail delivery. The agent maintained that the landlord should not be held responsible for this entire amount as the tenant has pre-paid for this Post Office Box until January 2019. The agent believed that the landlord should only be held responsible for this payment until such time as this tenancy ends.

The tenant noted that he relies on a wheelchair and, as such, it is very difficult to find alternative accommodations in his community, which would be suitable for his needs. Although he has been looking for other accommodations, he said that he has not yet located anything that would enable him to move to other premises.

The tenant gave undisputed sworn testimony that the landlord was fully aware from the time the tenant moved into the rental unit that the tenant was a regular marijuana user. The tenant said that he smoked every day and the landlord had never complained about this to him. The tenant also gave undisputed sworn testimony that the landlord had never complained to him about noise coming from the tenant's rental unit. In this regard, the agent said that she and her brother hear from their father about the loud music that the tenant plays and which upsets their father.

The tenant testified that the agent has an "unabiding hatred" against him. The tenant said that he was under the impression that all of issues that had been problematic for the landlord in the past had been settled by the time he signed the new Agreement in 2017. The tenant testified that he had received no warnings or complaints from the landlord or his agent about the tenant's actions. Since receiving the "warning letter" and 1 Month Notice on the same day, the tenant said that he has turned down his music and now takes extra precautions to ensure that he is not smoking marijuana when the landlord is outside.

The agent confirmed that since issuing the 1 Month Notice there has not been as much noise coming from the rental unit, but that she is not on site as much as her brother.

The tenant testified that most of the special damages he identified in his application, with the exception of the Post Office Box cost, was for work that the landlord had agreed to have him do on the property. The tenant said that he had paid a friend of his \$500.00 to remove the sailboat, but the friend would not issue a receipt for this work. The tenant maintained that this cost was the responsibility of the landlord.

#### Analysis -Tenant's Application to Cancel the 1 Month Notice

When a tenant applies to cancel a Notice to End Tenancy within the time period allowed under the *Act*, as occurred in this case, the burden of proof rests with the landlord to demonstrate that the Notice was issued for valid reasons to end the tenancy. As discussed at the hearing, my task is to evaluate whether the landlord had sufficient grounds to end this tenancy for the two reasons that remain from the 1 Month Notice that the landlord issued on May 15, 2018. For the most part, the landlord is required to demonstrate that as of that date, the landlord had sufficient grounds to end the tenancy.

Although there may be occasions when little notice would be given to a tenant to take corrective action in order to avoid the issuance of a 1 Month Notice for cause, landlords are generally expected to have given tenants some type of warning that a continuation of their current actions and behaviours might result in their tenancy ending for cause.

In this case, I find that the "warning letter" was issued at the same time as the 1 Month Notice. Even if this letter had been issued a few weeks earlier, the letter is devoid of any specific behaviours or actions that the landlord or his agent were finding objectionable. Under these circumstances, I find that the landlord has not given adequate warning that this tenancy might end unless the tenant took corrective action. In this regard, I find the sworn testimony of the tenant was credible and confirmed by the written evidence provided by the agent. While I understand that the agent is concerned that the landlord's circumstances have changed to the extent that this tenancy must end, the landlord cannot evict the tenant without giving the tenant an adequate opportunity to change specific behaviours outlined to the tenant in order to continue his tenancy.

I also find that the June 5, 2018 letter from the Doctor in charge of the Hospital unit treating the landlord was issued well after the 1 Month Notice was issued. Although that letter references discussions that occurred immediately prior to the decision to discharge the landlord from the Hospital, the agent said that her father was discharged in late May 2018, again after the 1 Month Notice had been issued.

Had the letter from the Doctor been issued prior to the issuance of the 1 Month Notice, then this might constitute evidence that supported the issuance of a 1 Month Notice in the interests of supporting the landlord's health care plan. However, even then the reason for the recommendation that this tenancy ends is due to the landlord's complex health situation and does not speak to any specific actions that the tenant has been taking that imperil the landlord's health. In fact, I find that the Doctor's letter takes care to note that this recommendation from the health care team was not intended as a reflection on the tenant.

The agent and her brother have identified a number of the tenant's actions and behaviours that aggravate her father. I fully understand their genuine interest in reducing their father's level of stress after his recent hospitalization; however, a tenancy cannot be ended merely because a landlord finds a tenant's continued presence upsetting. The complex health needs of the landlord raise questions as to whether the behaviours exhibited by the tenant are ones that could truly constitute grounds for ending this tenancy for cause. I find that the absence of providing the tenant with any meaningful form of warning prior to what would appear to have been a precipitously issued 1 Month Notice has not given the tenant an adequate opportunity to correct the issues cited by the agent in the evidence package and in the sworn testimony of the agent and her brother. For these reasons, I allow the tenant's application to cancel the 1 Month Notice of May 15, 2018.

Although this tenancy will continue until ended in accordance with the *Act*, the issuance of the 1 Month Notice should serve as a warning to the tenant to take corrective action to attend to the concerns raised by the landlord and his agent. There is some evidence that this has already happened.

It is also possible that circumstances have changed since the issuance of the 1 Month Notice, such that this tenancy can continue until the tenant is able to find accommodations elsewhere or that the landlord may no longer be able to rent out any portion of his house. The agent may be in a position to assist the tenant to obtain alternative accommodation in a location which would not be subject to what would appear to be the deteriorating health condition of a landlord.

#### Analysis -Tenant's Monetary Claim

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the tenant to prove on the balance of probabilities that the tenant has experienced damages or losses for which the tenant is entitled to compensation.

As noted earlier in this decision, the tenant's claim for punitive damages is not one that is allowed under the *Act*. The general damages described in the tenant's application appear to have been in reality a claim for aggravated damages, an award very rarely issued pursuant to the *Act*, and which were nevertheless not specifically requested in the tenant's application. I dismiss both of these portions of the tenant's application.

I find that the awards sought by the tenant for work performed for the landlord (i.e., moving a sailboat; moving cars; and moving scrap metal) falls more in the nature of an employment dispute or a contractual dispute as opposed to any matter that can properly be adjudicated in the context of an application under the *Act*. In this case, the agent gave undisputed sworn testimony that the sailboat had actually been sold to the tenant by the time it was removed from the premises. As I have no jurisdiction to make a decision regarding ownership of sailboats, or over contractual matters that extend beyond the *Act*, I decline jurisdiction to make a finding on the tenant's claims for moving the sailboat, moving cars, and moving scrap metal from this property.

I do have jurisdiction over the tenant's claim for compensation for the extra costs he incurred in securing a Post Office Box because the landlord refused to accept mail for him at the property address. The tenant has provided a copy of the \$344.40 receipt for his purchase of this Post Office Box, but the period of this purchase extends from January 2017 until January 2019. Since this tenancy is continuing until at least October 1, 2018, the tenant's pre-payment for this item would be within three months of the end of the term of the Post Office Box. Given that I accept the tenant's testimony that travelling to the Post Office Box instead of receiving his mail directly at his residence has presented problems for him due to his mobility challenges, I allow the tenant's entire claim for \$344.40 for this item.



As the tenant has been successful in important parts of his application, I allow him to recover his \$100.00 filing fee from the landlord.

Conclusion

I allow the tenant's application to cancel the 1 Month Notice, which is no longer of any force or effect. This tenancy continues until ended in accordance with the *Act*.

I issue a monetary award in the tenant's favour in the amount of \$444.40, for the tenant's retention of a Post Office Box until January 2019 and for recovery of his filing fee. As this tenancy is continuing, I order the tenant to reduce a future monthly rent payment by this amount.

With the exception as noted below, I dismiss the remainder of the tenant's application for a monetary award.

I am without jurisdiction to consider the tenant's application for a monetary award for moving a sailboat, moving cars and moving scrap metal from the landlord's property.

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: July 15, 2018

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Residential Tenancy Branch