



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes MT, CNC, OLC, PSF, AAT, MNDCT

### Introduction

This hearing dealt with an Application for Dispute Resolution (the “Application”) and an Amendment to an Application for Dispute Resolution (the “Amendment”) that were filed by the Tenant under the *Residential Tenancy Act* (the “Act”), seeking more time to make their Application, cancellation of a One Month Notice to End Tenancy for Cause (the “One Month Notice”), an order for the Landlord to comply with the Act, regulation, or tenancy agreement, an order for the Landlord to provide services or facilities required by the tenancy agreement or law, an order for the Landlord to allow the Tenant and his guests access to the rental unit, and a Monetary Order for loss or other money owed.

I note that section 55 of the Act requires that when a tenant submits an Application 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 section 52 of the Act.

The hearing was convened by telephone conference call and was attended by the Tenant, the Tenant’s advocate (the “Advocate”), a witness for the Tenant (the “Tenant’s Witness”), and the agent for the Landlord (the “Agent”); all of whom provided affirmed testimony. The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. Neither party raised any concerns regarding the service of the Application, the Notice of Hearing, the Amendment or the documentary evidence before me for consideration.

I have reviewed all evidence and testimony before me that was accepted for consideration in this matter in accordance with the Residential Tenancy Branch Rules of Procedure (the “Rules of Procedure”); however, I refer only to the relevant facts and issues in this decision.

At the request of the parties, copies of the decision and any orders issued in their favor will be e-mailed to them at the e-mail addresses provided in the hearing.

Preliminary Matters

**Preliminary Matter #1**

In the Application the Tenant sought multiple remedies under multiple sections of the *Act*, a number of which were unrelated to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. As the other claims by the Tenant are unrelated to the One Month Notice, I therefore exercise my discretion to dismiss the Tenant's claims for an order for the Landlord to comply with the *Act*, regulation, or tenancy agreement, an order for the Landlord to provide services or facilities required by the tenancy agreement or law, an order for the Landlord to allow the Tenant and his guests access to the rental unit, and a Monetary Order for loss or other money owed with leave to reapply.

**Preliminary Matter #2**

The Tenant applied for more time to make his Application seeking cancellation of the One Month Notice pursuant to section 66 of the *Act*. The One Month Notice states that it was posted to the door of the rental unit on June 30, 2018, but the Tenant stated that he did not receive it until July 4, 2018, as he was away from home. The Tenant did not submit any documentary evidence to corroborate that he was away from the rental unit from June 30, 2018, to July 4, 2018.

Section 90 of the *Act* states that documents attached to a door are deemed to be received three days later, unless earlier received. Although the Tenant stated that he did not receive the One Month Notice from his door until July 4, 2018, he did not submit any documentary evidence in support of his testimony that he was away from the rental unit from the time the One Month Notice was posted until July 4, 2018. As a result of the Tenant's lack of evidence to corroborate that it would not have been possible for him to have received the One Month Notice prior to July 4, 2018, I find that section 90 of the *Act* applies. As a result, I find that the Tenant was deemed served with the One Month Notice on July 3, 2018, three days after it was posted to the door of his rental unit.

As the Tenant was deemed served with the One Month Notice on July 3, 2018, and filed his Application seeking cancellation of the One Month Notice on July 13, 2018, I find that he filed the Application within the 10 day legislative timeframe provided for in section 47(4) of the *Act*. As a result, I find that the Tenant does not require more time in which to make the Application as the Application was made within the required time period.

### **Preliminary Matter #3**

At the outset of the hearing I advised the Agent that much of the documentary evidence submitted by him in support of the One Month Notice appears to be evidence relating to a previously decided matter. A copy of the previous decision was in the documentary evidence before me for consideration and I note that in that decision, a One Month Notice for late payment of rent dated May 2, 2018, was cancelled primarily because the Landlord failed to submit the documentary evidence now before me for consideration by the original arbitrator.

In reviewing the previous decision and the documentary evidence now before me on behalf of the Landlord, I find that the Agent is simply attempting to rehabilitate a previously decided matter by submitting for my consideration, documentary evidence that was relevant to the previous hearing but not submitted for that Arbitrators consideration at that time.

In the previous decision the arbitrator states the following:

*"This decision does not bar the landlord from issuing a future 1 Month Notice for new examples of the late payment of rent by the tenant that have occurred after the landlord's issuance of the 1 Month Notice of May 2, 2018, that was considered in this decision"*

Based on the above, I find that the Landlord is therefore bared from serving a One Month Notice for late payment of rent in relation to late rent payments prior to June of 2018, as the matter of late rent payments prior to June 2018 has already been decided. As a result, I advised the Landlord that I will only consider evidence of late rent payment from June 2018 forward in relation to the validity of the One Month Notice dated June 30, 2018.

#### **Preliminary Matter #4**

Although the Tenant's witness called into the hearing at the start of the telephone conference, she was excluded from the proceedings except when called upon to provide evidence and testimony for my consideration.

#### **Preliminary Matter #5**

Although the parties engaged in settlement discussions during the hearing, ultimately a settlement agreement could not be reached between them. As a result, I proceeded with the hearing and rendered a decision in relation to this matter under the authority delegated to me by the Director of the Residential Tenancy Branch (the "Branch") under Section 9.1(1) of the *Act*.

#### **Preliminary Matter #6**

Although the Agent mentioned several times during the hearing that he could call witnesses in support of his testimony, he admitted that he had not provided any witnesses with notice of the hearing or requested that they provide testimony for my consideration in today's hearing. At one point in the hearing I attempted to call one of the Agent's witnesses into the hearing, however, the phone number provided by the Agent in the hearing did not work and I could not reach the witness. Although I provided the Agent with the option of calling or texting the witness himself with the hearing phone number and access code, the Agent declined and ultimately no witness was called to provide testimony for the Landlord.

#### **Issue(s) to be Decided**

Is the Tenant entitled to cancellation of the One Month Notice?

If the tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

#### **Background and Evidence**

The parties agreed that a tenancy is in place and that the Tenant is obligated to pay rent in the amount of \$468.00 on the first day of each month.

The Landlord stated that the Tenant consistently pays rent late, that he or a person permitted on the property by him has significantly interfered with or unreasonably disturbed another occupant, and that the Tenant or a person permitted on the property by him has seriously jeopardized the health, safety, or lawful right of another occupant or the Landlord. As a result, the Agent stated that he posted a One Month Notice to the door of the Tenant's rental unit on June 30, 2018. The One Month Notice in the documentary evidence before me is dated June 30, 2018, has an effective date of July 31, 2018, and gives the following reasons for ending the tenancy:

- 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, and
- the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.

In support of the ground that the Tenant has repeatedly paid his rent late, the Landlord testified that the Tenant has paid rent late in June, July, and August of 2018, and provided the following payment dates for rent in the above noted time period:

- June 5, 2018
- July 4, 2018
- August 10, 2018

In addition to the above noted testimony, the Landlord provided copies of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (a "10 Day Notice") for June, 2018, a 10 Day Notice for July, 2018, and an invoice showing the late payment of July rent as noted above.

While the Tenant acknowledged paying rent late as described by the Agent in June, July, and August of 2018, both he and the Advocate disputed the validity of the One Month Notice stating that the Landlord has prevented him from paying rent on time. The Agent denied making it difficult for the Tenant to pay the rent on time stating that the other residents have no difficulty paying on time and that the Tenant has a long history of late rent payment. Both parties pointed to text messages in the documentary evidence before me in support of their positions regarding whether or not the Tenant was prevented from paying rent on time.

The Agent testified that the Tenant allowed a previous resident who was evicted and barred from returning to the premises into his rental unit, causing an unreasonable disturbance to both other occupants and the Landlord. The Landlord did not submit any

evidence in support of this testimony for my consideration. The Tenant denied knowing that his guest had been barred from the premises and stated that as soon as he became aware that the Landlord had an issue with their presence, they were asked to leave and subsequently vacated the premises. Further to this, the Tenant denied that either he or his guests caused any unreasonable disturbance to either the Landlord or other occupants of the building.

The Agent also alleged that the Tenant seriously jeopardized his safety by sending him a threatening text message, a copy of which was in the documentary evidence before me. The Tenant denied any knowledge of this text message and pointed out that it was not sent from his number, which is clearly attached to his name in the Agent's phone, as seen in the numerous other text messages in the documentary evidence before me. The Agent responded by stating that the Tenant must have had a friend send it as he was the only tenant being evicted and therefore the only tenant who would have reason to threaten him. The Tenant denied this allegation stating again that he did not send or know of this text message and refuting the Agent's testimony that no other tenants were either facing eviction or would have cause to threaten him.

### Analysis

As stated in the Preliminary Matters section of this decision, I find that the Tenant was deemed served with the One Month Notice on July 3, 2018, pursuant to section 90 of the *Act*.

Section 47 of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy pursuant to section 52 of the *Act*, if 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, or the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

Rule 6.6 of the Rules of Procedure states that the standard of proof in a dispute resolution hearing is on a balance of probabilities and that when a tenant disputes a notice to end tenancy, the landlord bears the burden of proof to demonstrate that they had cause to issue the notice to end tenancy pursuant to the *Act*. As a result, I find that it is incumbent upon the Landlord to satisfy me, on a balance of probabilities, that they had cause to serve the One Month Notice pursuant to section 47 of the *Act*.

Although the Agent alleged that the Tenant threatened him, the Tenant denied this allegation. While the Landlord pointed to a text message in the documentary evidence before me in support of his argument, I find it significant that the text message does not contain any personal identifying information or come from a number identified as belonging to the Tenant, despite the substantial history of text messages between them. Further to this, I do not find the Agent's testimony that the Tenant is the only person with cause to threaten him compelling. As a result, I am not satisfied, on a balance of probabilities, that this text message came from the Tenant or that they had any knowledge of it and I therefore find that the Landlord did not have cause to serve the One Month Notice based on serious jeopardy to the health or safety or lawful right of another occupant or the Landlord.

The Agent also stated that either the Tenant or his guests unreasonably disturbed or significantly interfered with other occupants or the Landlord; however, he did not submit any evidence in support of this testimony and the Tenant denied these allegations. Although both parties provided equally compelling and contradictory sworn testimony, as stated above, the burden of proof in this hearing lies with the Landlord. As a result, I therefore find that the Landlord has failed to satisfy me that either the Tenant or persons he permitted on the property have unreasonably disturbed or significantly interfered with the Landlord or other occupants of the building.

Having made the above findings, I will now turn my mind to that matter of late payment of rent. Residential Tenancy Policy Guideline (the "Policy Guideline") #38 states that three late payments are the minimum number sufficient to justify a notice to end tenancy pursuant to section 47 of the *Act*.

As stated in the Preliminary Matters sections of this decision, the Landlord cannot rely on late rent payments prior to June of 2018 for the issuance of the One Month Notice dated June 30, 2018, as the matter of late rent payments prior to June of 2018, has already been decided. Although the Tenant agreed that he made late rent payments in June, July, and August of 2018; at the time the One Month Notice was created and posted to the door of the Tenant's rental unit, the Tenant had only made one new and relevant late payment of rent for the month of June, 2018. Although the Tenant acknowledged paying rent late in July and August of 2018, as these months are after the date upon which the One Month Notice was created and served, they cannot be considered as justification for the issuance of the One Month Notice.

Based on the above, I therefore find that the One Month Notice dated June 30, 2018, is not valid as the Landlord has only established that the Tenant paid rent late on one occasion prior to the issuance of the One Month Notice. As a result, I order that the One Month Notice be cancelled and that the tenancy continue in full force and effect until it is ended in accordance with the *Act*.

Although the Tenant also provided testimony regarding the reasons rent was paid late; as the One Month Notice is dismissed because the Landlord has not satisfied me that the Tenant made at least three late rent payments prior to the issuance of One Month Notice, I have not made any findings of fact or law in relation to the reasons given by the Tenant for the late payment of rent.

Despite the foregoing, the Tenant should be aware that the Landlord is not prevented by this decision from serving a new One Month Notice for late payment of rent including but not limited to the months of June, July, and August of 2018, should they believe that they have cause to do so.

#### Conclusion

I order that the One Month Notice dated June 30, 2018, be cancelled and that the tenancy continue in full force and effect until it is 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: August 20, 2018

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Residential Tenancy Branch