



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC OPC MT

### **Introduction**

Only the tenant attended this hearing and gave sworn or affirmed testimony. The landlord did not attend although I left the teleconference hearing connection open until 11:20 a.m. in order to enable the landlord to call into this hearing scheduled for 11:00 a.m. on October 9, 2018. The tenant who attended was given a full opportunity to be heard, to present sworn testimony or affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the tenant and I were the only ones who had called into this teleconference. The tenant confirmed the One Month Notice to End Tenancy dated July 31, 2018 to be effective August 31, 2018 was served personally on July 31, 2018. The tenant /applicant gave evidence that they personally served the Application for Dispute Resolution dated August 17, 2018 with a witness who was present at the hearing. I find the documents were legally served for the purposes of this hearing. The tenant applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) To cancel a notice to end tenancy for cause pursuant to section 47; and
- b) To be granted more time to file this application as she was restricted from entering her unit for a time.

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

Is the tenant entitled to more time to file this application pursuant to section 66 of the Act? If so, has the landlord proved on the balance of probabilities that there is sufficient cause to end the tenancy or is the tenant entitled to any relief? Is the landlord entitled to an Order of Possession if the tenant is unsuccessful in the application?

### **Preliminary Issue:**

I find the tenant was late in filing her Application to Dispute the Notice to End Tenancy. However, I find the landlord had sent exterminators into her unit during the relevant time and she was unable to retrieve her documents. Pursuant to section 66 of the Act, I find

these were exceptional circumstances and the tenant made the application before the effective date of the Notice. Therefore, I grant her the additional 7 days to file this Application.

### **Background and Evidence**

Only the tenant attended the hearing and was given opportunity to be heard, to provide evidence and to make submissions. The undisputed evidence is that the tenancy commenced June 1, 2017, rent is \$685 a month and a security deposit of \$342.50 was paid.

Where the tenant has applied to cancel a Notice, Rule 11.1 of the Residential Tenancy Rules of Procedure require the landlord to provide their evidence first as the landlord has the burden of proving sufficient cause to end the tenancy for the reasons given on the Notice.

The landlord served a Notice to End Tenancy for the following reasons:

1. The tenant or a person permitted on the property by the tenant has seriously jeopardized the health, safety or a lawful right of another occupant or the landlord.

On August 28, 2018, the landlord provided a letter to the tenant stating they would cancel the Notice to End Tenancy provided the tenant would work to find another place to live and respect tenants in the building by not having a lot of visitors which makes people nervous as the visitors are unknown to them. The tenant speculated that this might be why the landlord did not attend. However, the tenant is not ready to move yet. The tenant provided a letter from her neighbour as evidence stating he doesn't hear noise from her apartment at night but only from the children in the daytime (a young boy and as six month old baby) and that is fine with him.

The tenant explained that the friend who caused some damage is the father of her child. He came over drunk one night and she told him not to come back. He was angry and did some damage on the way out. Police were called and he was arrested. She has a no contact order and he has not been back since.

The tenant began listing damages she suffered and wanted compensation. However, these were not noted on the face of her Application.

On the basis of the documentary and solemnly sworn evidence presented for the hearing, a decision has been reached.

**Analysis:**

As discussed with the tenant in the hearing, the onus is on the landlord to prove on a balance of probabilities that they have good cause to evict the tenant. I find the landlord has not satisfied the onus. They did not attend or provide sufficient sworn documentation that they have good cause to end the tenancy. I set aside the Notice to End Tenancy dated July 31, 2018. I find the tenancy is continued until ended legally in accordance with the Act.

I decline to consider the tenant's list of damages as it was not noted on the face of her Application and the landlord did not have opportunity to respond to it. I dismiss this portion of her Application and give her leave to reapply.

**Conclusion:**

The Application of the Tenant to set aside the Notice to End Tenancy is successful. The Notice to End Tenancy dated July 31, 2018 is hereby set aside and cancelled. The tenancy continues. The filing fee was waived.

I dismiss the tenant's claim for damages and give her leave to reapply.

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: October 09, 2018

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Residential Tenancy Branch