



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PMR HOLDINGS LTD & KEN RONALDS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            CNC, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on August 16, 2018 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated August 10, 2018. The Tenant sought reimbursement for the filing fee.

The Tenant appeared at the hearing with Legal Counsel and the Articling Student. The Agent for the Landlord (the "Agent") appeared at the hearing.

The Agent confirmed the correct name of the Landlord and I amended the Application accordingly. The Agent did not take issue with the Application being amended. The amendment is reflected in the style of cause.

I explained the hearing process to the parties who did not have questions when asked. The Tenant and Agent provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

The Agent confirmed the Landlord received the hearing package and raised no issues in this regard. The Agent testified that the Landlord did not receive any of the evidence listed in the Application.

The Tenant testified that he served his evidence on the Landlord. He said the evidence was served separately from the hearing package. He testified that he left the evidence at the property management office with a female. He did not know the name of the female. At first, he could not provide the date this occurred. Legal Counsel then said the Tenant delivered the package September 18, 2018.

The Agent testified that it is not possible the package was left in the property management office and simply did not make it to her.

I asked the Tenant and Legal Counsel if they had any evidence to support the position of the Tenant in relation to service of the evidence. Legal Counsel said he saw the Tenant with the package of evidence before he delivered it. Neither the Tenant nor Legal Counsel could point to any further evidence to support the Tenant's position about service.

I allowed the parties to make submissions on admission of the evidence and an adjournment which was raised by Legal Counsel.

Legal Counsel submitted that the Tenant delivered the evidence to the Landlord. He pointed out that the Tenant provided the date and time this occurred. He said he saw the package the Tenant delivered. He submitted that the matter should be adjourned if I am not satisfied of service. He submitted that there would be no prejudice caused by an adjournment. He said the Tenant did not know this was going to be an issue.

The Agent objected to an adjournment. She submitted that the rules around service are clear and stated that she followed the rules. She submitted that the evidence should be excluded in the circumstances.

I excluded the Tenant's evidence and denied the request by the Tenant for an adjournment.

Parties are expected to know their obligations in relation to dispute resolution hearings. Those obligations are clearly set out in the Rules of Procedure (the "Rules"). Rule 3.5 of the Rules states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with...all evidence as required by the Act and these Rules of Procedure.

Here, the parties gave conflicting evidence. The Tenant testified that he served the evidence on the Landlord. The Agent disputed this. The Tenant provided no evidence to support his position in relation to service. The statements by Legal Counsel that he saw the package that was delivered do not support the testimony of the Tenant regarding service as Legal Counsel was not present to witness the evidence being served.

In relation to the request for an adjournment, I considered the criteria outlined in rule 7.9 of the Rules. I find the need for the adjournment did arise from the actions of the Tenant in failing to provide evidence regarding service of the evidence. Further, I do not accept the submission of Legal Counsel that no prejudice would result from an adjournment. The Landlord has served a One Month Notice to End Tenancy for Cause on the Tenant. This hearing will determine whether the Notice is valid or not and therefore whether the tenancy will continue or not. In my view, it does cause prejudice to the Landlord to adjourn this matter as the determination of whether this tenancy will continue or end would be put off for another month or so.

In my view, the Tenant should have been prepared to prove service at the hearing as required by rule 3.5 of the Rules. The Tenant failed to prove service and therefore the Tenant's evidence is excluded as I am satisfied admission of the evidence would be unfair to the Landlord given the Agent testified she had not received the evidence. Further, I do not find it appropriate to adjourn the matter.

The Tenant confirmed he received the Landlord's evidence.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all admissible documentary evidence and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. It names a different landlord; however, the Agent explained that the person who completed the agreement put the name of the building not the name of the landlord. The Agent confirmed the Landlord should be named as the landlord. The Tenant said he has no idea who his landlord is.

The agreement is with the Tenant and relates to the rental unit. The tenancy started May 1, 2006 and was for a fixed term ending April 30, 2007. The tenancy then became a month-to-month tenancy. Rent is due by the first day of each month. The agreement is signed by the Tenant and on behalf of the Landlord.

The Notice was submitted as evidence. It is addressed to the Tenant and refers to the rental unit. It is signed and dated August 10, 2018 by the Agent. It has an effective date of September 30, 2018. The grounds for the Notice are as follows:

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

- b. put the Landlord's property at significant risk.

("Ground 1")

- 2. The Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit or property ("Ground 2").
- 3. The Tenant has not done required repairs of damage to the unit ("Ground 3").
- 4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so ("Ground 4").

The Agent testified that she served both pages of the Notice by posting it to the door of the rental unit August 10, 2018. The Tenant confirmed he received both pages of the Notice on the door of the rental unit August 10, 2018.

The Tenant confirmed he filed the Application August 16, 2018.

In relation to the grounds for the Notice, the Agent testified as follows. She inspected the rental unit and found excessive hoarding, impassable pathways, dirt throughout and a long-term leak that had damaged the cupboard and flooring in the kitchen. The leak has also caused mold. The leak had never been reported. The Tenant was sent a letter asking that he address these issues and advising that a further inspection would be done. A plumber attended for the leak and noted that there was mold such that he found it difficult to breathe. The Tenant was sent two more letters to address the issues. Further inspections were done. She did not notice any improvement between the inspections.

In relation to Ground 1, the Agent testified that the filth in the unit has caused damage. She said the counter and floor has been ruined. She noted the mold issue. She submitted that the excessive hoarding is a fire hazard because if a fire started, there is a lot of fuel for the fire in the rental unit.

In relation to Ground 2, the Agent testified that the Tenant has caused extraordinary damage to the rental unit due to the mold. She said the kitchen cabinet needs to be removed and the area remediated because of the mold. She pointed to the number of items the Tenant had under the sink. I understood her to say there may be mold in the cupboard, flooring and wall in the area around the sink.

In relation to Ground 3, the Agent testified that the Tenant was responsible for reporting the leak and never did. She said the Tenant had to have known about the leak because the flooring in the kitchen was significantly damaged. She testified that the leak appeared to have been going on for years.

In relation to Ground 4, the Agent testified that the Tenant has breached term 26 in the agreement which relates to the obligations of tenants in relation to repairs and maintaining reasonable health, cleanliness and sanitary standards in the rental unit.

The Landlord had submitted photos of the unit. The Agent testified that these are from an inspection on September 11, 2018.

The Landlord submitted an inspection form from June 8, 2018 that shows the unit was dirty, there was hoarding and that the countertop and flooring in the kitchen were damaged by water and were soft.

The Landlord submitted a letter dated June 12, 2018 sent to the Tenant in relation to the June 8<sup>th</sup> inspection. The letter refers to the excessive belongings which pose a fire risk, unreported water leak that has caused damage and the filth in all areas of the unit. The letter indicates that the Tenant is in violation of material terms of the tenancy agreement and states that the tenancy is at serious risk of termination if the issues outlined are not addressed. The letter indicates that a further inspection will be done.

The Landlord submitted an invoice from the plumber who attended the unit June 28, 2018. It states that the plumber replaced the kitchen faucet and that the whole countertop needs to be replaced. It notes that there was black mold everywhere and that the plumber could not breathe.

The Landlord submitted a letter dated July 24, 2018 sent to the Tenant in relation to an inspection July 20, 2018. The letter indicates that the condition of the unit is very poor and does not meet reasonable health, cleanliness and sanitary standards. It refers again to the excessive belongings. The letter states that the leak has caused damage to the cabinet, floor and counter and that black mold is growing in the cabinet. The letter states that the Tenant must remove the excess belongings and clean the unit otherwise the tenancy will be terminated. It states that the unit will be inspected again August 8, 2018.

The Landlord submitted a letter dated August 9, 2018 sent to the Tenant. It relates to the inspection on August 8, 2018. It states that the conditions in the unit are unchanged. It indicates that the Landlord has no choice but to issue the Notice and terminate the tenancy.

The Tenant testified that there has never been black mold in the rental unit. The Tenant referred to his profession and indicated that he collects extensive material for his profession. He said he has lived in two places over the last 24 years and that he moved to the rental unit from a good-sized home. He testified that he has removed 30 boxes of materials since receiving the first warning letter.

In relation to the leak, the Tenant testified that the kitchen sink tap dripped a bit and that this was not due to his negligence or conduct. He said he did not think the dripping was serious and that he would have reported the leak if he had noticed it. He said the building is aging and that

he did not cause the damage. He disputed that the kitchen floor has been damaged. He said the cabinets are made of particle board and any damage to them is normal wear and tear. He disputed that the state of his unit was a fire hazard. He said he will remove further belongings.

In response to questions from Legal Counsel, the Tenant testified that he reinforced the particle board under the sink with a solid wood board after the leak was fixed. He said he cleaned inside the cupboard and there is no mold.

Legal Counsel made the following submissions. There is no evidence of mold in the Landlord's photos. There is no evidence that the mold has caused issues and the Tenant has not suffered any ill effects. There is no fire inspection report stating the condition of the unit poses a fire hazard. There is no evidence the leak has affected others. The leak has been fixed and the Tenant installed wood board under sink. The Tenant cleaned the stove. The Tenant is removing further items from the unit. The Landlord's photos do not depict the entire unit. The Landlord has not met their onus to prove the Notice.

Legal Counsel referred to decisions from previous arbitrations. The Agent confirmed she had received these.

In reply, the Agent testified that she was in the unit for only a few minutes before she found the leak in the sink. She said she could smell it before she found it. She testified that the water went under the kitchen floor and turned it dark.

### Analysis

The Landlord was entitled to issue the Notice based on the grounds listed pursuant to sections 47(1)(d), (f), (g) and (h) of the *Act*.

A notice to end tenancy under section 47 of the *Act* must be served on the tenant in accordance with section 88 of the *Act*. The notice must comply in form and content with section 52 of the *Act*.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

Based on the testimony of both parties, I find the Notice was served on the Tenant in accordance with section 88(g) of the *Act*. I accept the testimony of the Tenant that he received the Notice August 10, 2018.

The Tenant had 10 days to dispute the Notice pursuant to section 47(4) of the *Act*. Based on the testimony of the Tenant and our records, I find the Tenant disputed the Notice within the time limit set out in the *Act*.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

I have reviewed the prior arbitration decisions. I am not bound by these decisions. Further, I find them distinguishable on the facts outlined in the decisions.

I accept the submission of the Agent that the excessive belongings in the unit pose a fire hazard. I acknowledge that the Landlord did not provide a fire inspection report. I accept that there may be circumstances where such a report is required. However, I find it clear from the photos submitted that the excessive belongings in the unit pose a fire hazard given the amount of belongings. I also find it clear from the photos that emergency personnel could not easily navigate the rental unit if there was a fire given the amount and location of the items. This would hinder the ability of emergency personnel to deal with a fire. I do not find a fire inspection report is required in these circumstances.

I find the fire hazard created by the excessive belongings both seriously jeopardizes the health or safety of other occupants and puts the Landlord's property at significant risk.

I also accept that the Tenant has caused extraordinary damage to the unit. I accept that there was a leak under the kitchen sink in the unit. The Tenant did not dispute this. I accept that the leak was occurring for some time as submitted by the Agent. The Invoice from the plumber indicates that the issue was the kitchen faucet. The Tenant acknowledged that the faucet leaked but said he did not think it was serious. I accept that the leak caused mold. The Tenant disputed this; however, the Invoice from the plumber supports the Agent's testimony on this point and I accept that the Landlord has proven on a balance of probabilities that there was mold in the kitchen sink area. Further, there is no admissible evidence before me from the Tenant supporting his position. I also accept that the leak damaged the cupboard and floor as stated by the Agent. The Invoice from the plumber supports this as it states that the whole countertop needs to be replaced. Further, the photo of the sink area submitted as evidence shows the flooring around the kitchen sink area has darkened. I find that the leak must have been occurring for some time to cause this amount of damage considering it was simply a leak from the kitchen faucet.

Whether the Tenant caused the faucet to leak or not is not relevant. The Tenant failed to report the leak to the Landlord and this is what caused the damage. I do not accept that the Tenant was unaware of the leak or that it was serious given the extent of the damage including the mold, damage to the floor and damage to the countertop and cupboard. If the Tenant was unaware of the leak, I find he was negligent in this regard. I find that it is the Tenant's failure to report the leak that caused the excessive damage.

Further, I accept that the damage is beyond reasonable wear and tear and is excessive. The Agent testified that the cupboard must be removed and the area remediated. I accept this

based on there being mold in the area and based on the photos submitted of the area. This is also supported by the Invoice from the plumber. Given the extent of the damage, I find it is excessive and not the usual damage one would expect to occur during a tenancy.

I find the Landlord has proven the grounds for the Notice on a balance of probabilities. I do not find it necessary to decide whether the Landlord has proven Ground 3 or Ground 4 given my findings above. I uphold the Notice and dismiss the Application.

I note that the Tenant and Legal Counsel submitted that the Tenant had removed belongings since receiving the first warning letter and was going to remove further belongings. However, the photos submitted were taken after the Notice was issued. In my view, the relevant time is when the Notice was issued and whether the Landlord had grounds at that point. I find that the Landlord did. I also note that the Tenant was provided two warnings prior to the Notice being issued. In my view, whether the Tenant intends to remove further belongings is not relevant to the analysis.

I decline to award the Tenant reimbursement for the filing fee given he was not successful in this application.

Pursuant to section 55(1) of the *Act*, I grant the Landlord an Order of Possession. The Landlord asked that the Order of Possession be effective October 31, 2018.

### Conclusion

The Application is dismissed. The Notice is upheld.

The Landlord is granted an Order of Possession effective at 1:00 p.m. on October 31, 2018. This Order must be served on the Tenant. If the Tenant does not comply with this Order, it may be filed in the Supreme Court and enforced as an order of that court. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: October 09, 2018

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Residential Tenancy Branch