



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY INC. PROSPERO  
INTERNATIONAL REALTY INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel 1 Month Notice to End Tenancy for Cause, (the “Notice”) issued on September 13, 2018.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Preliminary and Procedural matter

At the outset of the hearing the tenant’s advocate requested an adjournment. The advocate stated that the tenant should be entitled to have counsel represent them at the hearing, and they are not available until January 2019. Filed in evidence is a letter dated November 1, 2018.

The landlord’s agent objected to any adjournment. The landlord’s agent stated that the tenant has but the landlord’s property at serious risk and it would be unfair and prejudicial to the landlord to delay this matter.

The tenant argued that they contacted the law program in the middle of October 2018, not on November 1, 2018, as stated in the letter.

In this case, the Law Students Legal Advice Program (“LSLAP”) provides a letter to the tenant that states in part,

“Thank you for contacting the ... (“LSLAP”) on November 1<sup>st</sup>, 2018. At this time, we write to provide you with our summary advice.

....

We cannot represent you on Nov. 5<sup>th</sup> hearing because we do not have enough time to review relevant materials and prepare for the hearing.

...

Due to the nature of our program, we often will not be able to provide clients with legal assistance for 2-3 weeks after the initial meeting...Please note that LSLAP blackout period from Nov. 24<sup>th</sup>, 2018 to Jan. 8<sup>th</sup> 2019. Therefore, we recommend that you should adjourn the hearing to a date after January 8, 2019.”

[Reproduced as written]

In this case, the tenant was served with the Notice on or about September 13, 2018. It was within the tenant control to contact the LSLAP, at that time. Even, if I accept the tenant’s version that it was in mid-October that they contact the LSLAP and not November 1, 2018, as stated in the LSLAP letter, I find that was an unreasonable delay by the tenant.

Further, I find it is unreasonable to expect a hearing of this nature to be adjourned simply to accommodate the LSLAP school schedule, to which they are not available until January 2019, due to exams.

Furthermore, the tenant is present with an advocate.

Additionally, the landlord objected to any delay in the hearing. I find any adjournment would be unfair and prejudicial to the landlord, as the reason stated in the Notice is that the tenant has put the landlord’s property at significant risk.

Based on the above, I deny the tenant’s request for an adjournment.

Issues to be Decided

Should the Notice be cancelled?

Background and Evidence

The tenancy began on October 29, 2004. Current rent in the amount of \$1,170.00 was payable on the first of each month. The tenant paid a security deposit of \$440.00.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on October 31, 2018.

The reason stated in the Notice was that the tenant has:

- Put the landlord's property at significant risk.

The landlord's agent testified that they have had problems with the tenant hoarding, since 2014. The agent stated they have attempted to work with the tenant since that time; however, the problem has not been fixed even after the tenant has had many opportunities' to do so.

The landlord's agent testified that the tenant was given a notice to end tenancy in 2016, which they cancelled as they were working with the tenant; however, the tenant pattern of hoarding is putting the property at significant risk as the tenant keeps bring the items back.

The landlord's agent testified that the local fire department was monitoring the situation and they attend the tenant's rental unit on August 23, 2018 and the inspection revealed, accumulation of excessive combustibles and blocked or restricted means of egress. The agent stated that the tenant was given until September 10, 2018, to have 75% of the combustibles removed and to clean and maintain of egress from floor area. Filed in evidence is a copy of the order.

The landlord's agent testified that the local fire department attended on September 11, 2018, and found that the tenant had move large amounts of items into the common area of the hallway and not had them removed from the premises. The agent stated that the fire department told them that as the tenant has not complied with their order, that it was now the responsibly of the landlord to rectify the problem. Filed in evidence are photographs of the premises on September 11, 2018.

The landlord's agent testified that they then provided a letter to the tenant, and issued the notice to end tenancy, as the tenant has put the landlord's property at significant risk.

The tenant's advocate stated that they do not deny any evidence that the landlords have provided and that they have been patient with the tenant.

The tenant testified that they have provided photographs of the rental unit that were taken in the middle of October 2018, showing that the rental unit is in compliance. Filed in evidence are photographs.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- Put the landlord's property at significant risk.

In this case the landlord has been working with the tenant and the tenant's issue of hoarding for an extended period of time. This is supported by a previous notice to end tenancy.

In this case, landlord does not want to continue the tenancy as the issue of hoarding has continued.

I accept the evidence of the landlord's agent that the fire department made an order that the rental unit was unsafe due to an accumulation of excessive combustibles and blocked or restricted means of egress. The tenant was given an order that they must comply with the city by-law by September 10, 2018.

On September 11, 2018, the fire department and the landlord attended for a final inspection of the tenant's unit. The tenant had moved large amount of items into the hallway and unit did not comply with their order.

While I accept the tenant's photographs of the rental unit, appear to show the rental unit reasonable organized, those photographs were taken in mid-October after they were given the Notice and not by the date given by the fire department for compliance. Simply making an attempt to comply with the Notice after it was given is not relevant as the tenant was given an order to comply by September 10, 2018, which they failed to do.

I find the evidence supports the Notice was issued for the reasons stated. I find the Notice issued on September 13, 2018, has been proven by the landlord and is valid and enforceable. I find the tenancy legally ended on October 31, 2018, which is the effective date of the Notice. I find the tenant is now overholding the premises.

Therefore, I dismiss the tenant's application to cancel the Notice.

As the landlord has accepted occupancy rent for the month of November 2018, I find that the landlord is entitled to an order of possession effective **November 30, 2018, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

### Conclusion

The tenant's application to cancel the Notice, issued on September 13, 2018, is dismissed. The landlord is granted an order of possession

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: November 05, 2018

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Residential Tenancy Branch