



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding RAINCITY HOUSING AND SUPPORT SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            CNC, RP

### Introduction

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

- cancellation of the landlord's One Month Notice to End Tenancy for Cause (One Month Notice) pursuant to section 47 of the *Act*; and
- an Order for the landlord to make repairs to the rental unit or property, pursuant to section 62 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The housing society landlord was represented by its agents G.S. and C.B., with G.S. speaking on behalf of the landlord, and herein referred to as "the landlord".

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's application for dispute resolution, personally served by the tenant. Based on the undisputed testimonies of the parties, I find that the landlord was served with the tenant's application for dispute resolution in accordance with section 89 of the *Act*.

The tenant confirmed receipt of the landlord's evidence. The tenant testified that he had personally served an agent of the landlord with his evidence on November 26, 2018, however the landlord testified they were not in receipt of the evidence as it may not have been delivered to the landlord's agents office. As the tenant failed to serve his evidence in accordance with the Rule 3.14 of the Residential Tenancy Branch Rules of Procedure, which requires that an applicant serve evidence on the respondent and to the Residential Tenancy Branch at least 14 days in advance of the hearing, I advised the tenant that I would not consider his submitted documentary evidence however he was a liberty to provide verbal testimony regarding his application.

### Preliminary Issue – Amendment of Tenant's Application

At the outset of the hearing, the parties confirmed that the tenant's Application was missing the qualifier of "East" in front of the street name provided as the dispute address. Pursuant to my authority under section 64(3)(c) of the Act, I amended the tenant's Application to provide the correct and full street name for the dispute address.

#### Preliminary Issue – Unrelated Claims

The tenant's Application included an unrelated claim for repairs to be made to the rental unit, in addition to the tenant's claim to dispute the landlord's One Month Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the above-noted claim is not related to the tenant's Application to cancel the One Month Notice. Therefore, I advised the tenant that only the tenant's Application to dispute the landlord's One Month Notice would be heard and considered at this hearing, and I granted the tenant liberty to reapply for the unrelated claim pertaining to repairs, subject to any applicable limits set out in the *Act*.

#### Preliminary Issue - Procedural Matters

I explained to the parties that section 55 of the *Act* requires that when a tenant submits an Application for Dispute Resolution 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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the parties were advised that the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

#### Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? And if not, is the landlord entitled to an Order of Possession?

#### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A written tenancy agreement was submitted into evidence providing the following details pertaining to this tenancy:

- This month-to-month tenancy began on March 1, 2011.
- Current monthly rent of \$375.00 is payable on the first of the month.
- The tenant did not provide a security deposit.

The One Month Notice dated October 26, 2018, submitted into evidence by the tenant, states an effective move-out date of November 30, 2018, with the following boxes checked off as the reasons for seeking an end to this tenancy:

*Tenant or a person permitted on the property by the tenant has:*

- *put the landlord's property at significant risk.*

*Tenant or a person permitted on the property by the 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.*
- *jeopardize a lawful right or interest of another occupant or the landlord.*

The "Details of Cause" section of the notice provides the following additional details pertaining to the reasons for ending the tenancy, as follows:

*this tenancy has been problematic for some time including allowing his dogs to use his unit and the hallway to urinate in. Recently he was found, along with his guest(s), attempting to break into another unit in the building. Will not allow needed repairs to the unit.*

The tenant confirmed he received the One Month Notice served to him in person by the landlord on October 29, 2018. On November 2, 2018, the tenant filed an Application for Dispute Resolution to cancel the notice.

The landlord confirmed that there were no police reports or other documentary evidence submitted into evidence to support the landlord's grounds pertaining to the tenant engaging in illegal activity. The landlord acknowledged that after the notice had been issued, it was determined that there was no evidence to support the allegation that the tenant tried to break into another unit in the building.

As such, I explained to the landlord that I did not find there was any basis for issuing the One Month Notice on the grounds of illegal activity and I would not be considering this ground in my determination of this matter.

The landlord proceeded to provide testimony regarding the ground that the tenant had put the landlord's property at risk, by altering the rental unit without permission and leaving garbage in the hallway. The landlord claimed that the tenant ripped out the bathroom flooring in his rental unit, and as a result there had been water ingress discovered in the rental unit below. The landlord alleged that the tenant's actions are responsible for the water damage in the unit below. The landlord testified that the tenant had allowed his dog to urinate in the bathroom, causing the flooring to become damaged. The landlord further testified that the tenant has damaged other building elements in the rental unit, such as cabinet doors, and that the tenant leaves garbage in the hallway and allows his dog to urinate in the hallway. The landlord's documentary evidence consisted of photographic evidence of the tenant's bathroom and the hallway outside the tenant's rental unit; internal staff notes documenting issues with the tenant; and documentation of staff communications with the tenant.

The tenant acknowledged that he removed the bathroom flooring. The tenant testified that he did so because the flooring was water-damaged from a leak from the shower stall and a leaky toilet and as a result, the linoleum was peeling back causing a tripping hazard. The tenant testified that he had previously made requests to the landlord to have it fixed, although the tenant had no evidence of these requests.

The tenant acknowledged that he would leave his garbage in the hallway for short periods of time, such as a few hours, until he was ready to take the garbage to disposal.

### Analysis

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch.

The tenant was personally served and received the landlord's One Month Notice on October 29, 2018.

The tenant filed an application to dispute the notice on November 2, 2018, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

After reviewing the One Month Notice submitted into evidence, I find that the notice meets the requirements for form and content as set out in section 52 of the *Act* as it is signed and dated by the landlord, provides the address of the rental unit, states the effective date of the notice, sets out the grounds for the tenancy to end, and is in the approved form.

In this matter, based on the testimony and evidence presented, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to prove any of the grounds for issuing the One Month Notice, as explained below.

The landlord acknowledged there was no evidence of the tenant engaging in illegal activity. As such, the landlord has not proven this ground.

Although there is no dispute that the tenant ripped up the bathroom flooring, and that the landlord is at liberty to pursue available remedies under the *Act* as a result of the tenant's actions, the matter before me is to determine if the landlord has proven the grounds – as stated on the One Month Notice – for ending the tenancy. The landlord failed to provide sufficient evidence to prove that the tenant's action of ripping up the bathroom floor was the cause of the water damage to the rental unit below, thereby putting the landlord's property at *significant risk*. The landlord submitted into evidence staff emails about a water leak above the shower of the rental unit below the tenant's rental unit. Although the staff stated that the water leak was not a drain issue, and that the water ingress was due to the ripped-up flooring in the tenant's unit, the landlord has not submitted any evidence from a qualified plumbing tradesperson to confirm the origin or cause of the leak. The tenant disputed the landlord's evidence and claimed that he had experienced a shower leak and a leaky toilet. In situations where facts are in dispute, a preponderance of evidence can shift the balance of probabilities, and in this case, I do not find that the landlord has provided sufficient evidence to counter the tenant's claims, given that the landlord bears the burden of proof in this matter.

The tenant acknowledged a lack of compliance in promptly taking his garbage, which he sets out in the hallway, for disposal. However, the tenant testified that other residents on the floor also leave their garbage in the hallway, and so he was not the only resident responsible for the issue. The landlord testified that the garbage left in the hallway posed a hazard for other residents on the floor, but did not provide sufficient evidence that the tenant was the person solely responsible, or that the issue of leaving garbage in the hallway was putting the landlord's property at *significant risk*.

As such, I have found that the landlord has failed to satisfy the burden of proving the grounds for ending the tenancy for cause, the tenant's application is successful and the landlord's One Month Notice is cancelled and of no force or effect.

Therefore, the tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenant was successful in his application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated October 26, 2018 is cancelled and of no force or effect, and this tenancy shall continue 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: December 12, 2018

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Residential Tenancy Branch