



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### 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 (the "One Month Notice") pursuant to section 47 of the *Act*.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions. The landlord, represented by managers J.M and R.A. (the "landlord"), acknowledged receipt of the tenant's Notice of Hearing and Application for Dispute Resolution. Both parties acknowledged receipt of each other's evidence and neither party raised issues of service. I find the parties were served in accordance with the *Act*.

The landlord issued and personally served the One Month Notice on January 21, 2019. I find that the tenant was properly served with the One Month Notice on January 21, 2019 pursuant to section 88 of the *Act*.

### Issue(s) to be Decided

Is the tenant entitled to an order for cancellation of the landlord's One Month Notice pursuant to section 47 of the *Act*?

If not, is the landlord entitled to an order of possession pursuant to section 55 of the *Act*?

### Background and Evidence

The parties agreed that this tenancy started on August 1, 2014. The rent was \$665.00 per month and the landlord holds a \$332.50 security deposit.

The landlord testified that the rental unit consisted of a shared common area with a neighbouring rental unit. There is a locking doorway from the hall which leads to the

tenant's rental unit and the neighbouring rental unit. Both the tenant and the neighbour share a single bathroom located in the shared entry area.

The landlord issued a One Month Notice to End Tenancy on January 21, 2019. The landlord checked the following as grounds for the Notice:

- 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.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord testified that the tenant had a guest that frequently stayed in the rental unit. However, the landlord testified that city rules prohibited more than one occupant in these units since they share the bathroom with their neighbour. The landlord sent the tenant a letter on December 3, 2018 warning the tenant that they will terminate his tenancy if he continues to let a guest reside with him in the rental unit.

The tenancy agreement does not prohibit additional occupants. However, there is a provision in the tenancy agreement which states that a guest occupying the rental unit more than two weeks per year needs permission from the landlord.

The landlord testified that the tenant's neighbour had complained that the tenant was making sexually harassing, abusive and foul comments to her. The landlord sent a warning letter to the tenant on December 3, 2018 stating that they would seek to end his tenancy if this conduct continued. The warning letter stated that the tenant was in breach of section 21 of the tenancy agreement which stated that "...the tenants and guests shall not disturb, harass, or annoy other occupants of the residential property or neighbours."

The landlord testified that they received a written complaint from the tenant's neighbour on January 15, 2019 which the landlord submitted as evidence. The written complaint stated that the tenant's sexually harassing comments had continued since her previous complaint in December 2018. The complaint letter also stated that the tenant's neighbour was moving out because she was uncomfortable living in the rental building. The landlord testified that the tenant's neighbour moved out on February 15, 2019.

The tenant denied these allegations. He testified that he did not make any sexually inappropriate comments to his neighbour.

The tenant also testified that he had a friend who frequently visited him but his friend does not live in the rental unit. The tenant produced a letter from his friend's landlord which stated that his friend had his own separate rental unit. The tenant said that his friend does visit occasionally and it is not improper to have guests.

### Analysis

A tenant may dispute a One Month Notice to End Tenancy for Cause pursuant to section 47(4) of the *Act*. Pursuant to the *Residential Tenancy Branch Rules of Procedure*, Rule 6.6, the landlord has the onus of proof to establish, on the balance of probabilities, that notice to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct.

The landlord's One Month Notice claimed the following basis for ending the tenancy for cause: (i) 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; and (ii) breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The landlord based these grounds for ending the tenancy on an allegation that the tenant has sexually harassed his neighbour and an allegation that the tenant has been hosting an unauthorized occupant in his rental unit. I will address each of these claims separately.

### *Sexual Harassment*

The landlord did not produce any witnesses to support their sexual harassment allegations. The only evidence the landlord presented in support of these allegations was an unsworn complaint letter. Although the complaint letter does raise serious allegations, it is difficult to evaluate the veracity of written statements without the presence of the person who wrote it, the tenant was not afforded an opportunity to question the author of the written statement and the landlord had no first-hand knowledge of these alleged incidents.

The tenant denied the allegations stated in the complaint letter. I find the tenant credible and I find no reason to doubt his testimony. Overall, I find that the landlord has failed to provide sufficient evidence to establish that the tenant engaged in the sexually harassing behaviour as alleged in the complaint letter.

### *Guests*

The landlord argued that the tenant had a guest improperly living in the rental unit. After having reviewed all evidence and following a consideration of the testimony presented during the hearing, I find the landlord did not provide sufficient evidence to establish this allegation. The landlord produced only a single complaint letter in support of the Notice to End Tenancy. The tenant denied the allegation and testified that his friend did not live in the rental unit. I find the tenant's testimony that his friend only visited occasionally as credible. Furthermore, the tenant's testimony was corroborated by the letter from the friend's landlord which stated that his friend had his own separate residence. I am not satisfied that the landlord has established that the tenant had a guest living in the rental unit as alleged in the Notice to End Tenancy.

The One Month Notice is cancelled and is of no force or effect and the tenancy continues until ended in accordance with the *Act*.

### Conclusion

I grant the tenant's application to cancel the One Month Notice.

The One Month Notice is cancelled and is of no force or effect and the tenancy continues until 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: March 19, 2019

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Residential Tenancy Branch