



# 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* ("Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause, dated March 29, 2019 ("1 Month Notice"), pursuant to section 47.

The landlord, the landlord's agent PS ("landlord's agent"), the tenant, and the tenant's two advocates KP and DD ("tenant's legal advocate" and "tenant's advocate") attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The landlord confirmed that his agent had permission to speak on his behalf at this hearing. The tenant confirmed that his two advocates had permission to speak on his behalf at this hearing. This hearing lasted approximately 45 minutes.

The landlord's agent confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant's legal advocate confirmed receipt of the landlord's evidence package. In accordance with sections 88, 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's application and the tenant was duly served with the landlord's evidence package.

The tenant confirmed receipt of the landlord's 1 Month Notice on March 29, 2019, by way of posting to his rental unit door. The landlord confirmed that he served the notice to the tenant using the above method on the above date. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on March 29, 2019.

### Issues to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an order of possession for cause?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of the respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This month-to-month tenancy began approximately 7 to 8 years ago. Monthly rent in the current amount of \$410.00 is payable on the first day of each month. A security deposit of \$200.00 was paid by the tenant and the landlord continues to retain this deposit. No written tenancy agreement was signed by the parties. The tenant continues to reside in the rental unit. The rental unit is a room in the upper portion of a house.

Both parties agreed that the landlord issued the 1 Month Notice with an effective date of April 30, 2019, for the following reason:

- *Rental unit/site must be vacated to comply with a government order.*

The landlord's agent testified regarding the following facts. The tenant rents a room in the house, which is shared with 7 other occupants. The landlord received a government order, dated February 26, 2019, indicating that no rooming house is permitted on the property because it is not zoned for rooming houses. A copy of the order was given to the tenant on May 8, 2019, by the landlord, because he was busy with other issues so he could not give it earlier. The City requires the rental unit to be vacant. The requirement in the order to remove the locks from the rooms immediately is only a temporary solution in order for the City inspectors to inspect the property. However, none of the other 7 occupants besides the tenant, want to remove their room door locks in order to live there because it is unsafe and thefts might occur. 1 Month Notices were provided to the other 7 occupants in order for them to vacate the property. A rooming house is defined as a house where separate rooms are rented to different occupants as opposed to just an upstairs suite and a basement suite. Although the order states that the current occupants may not need to be evicted, this is only temporary for safety reasons, not permanent.

The landlord's agent stated that the main reason the 1 Month Notice was given to the tenant was to comply with the government order but it was also given because the tenant has been causing problems and fighting with the other occupants in the house and causing complaints from the neighbours by leaving a "garbage dump" mess in the yard at the rental property.

The tenant's legal advocate submitted the following facts. The landlord's complaints regarding fighting and cleaning are not relevant to the 1 Month Notice. The tenant obtained the City notice himself, not from the landlord. Page 2 of the City notice states that it may not be necessary to evict the current occupants, so the tenant should not have to vacate the rental unit. The landlord failed to provide a definition of a "rooming house" as per the City requirements.

The tenant's advocate stated the following facts. Page 2 of the City notice states that if the keyed locks are removed immediately, it would be in compliance, so the tenant should not have to vacate. The tenant is agreeable to removing the keyed lock from his rental unit door. The rooming house can be avoided by allowing the unrelated occupants to live in separate rooms without the keyed locks on their doors. The tenant only resides in the upper part of the house, not the lower part where alterations were made and permits are only required for the lower part, as per the City notice.

### Analysis

In accordance with section 47(4) of the *Act*, the tenant must file his application for dispute resolution within ten days of receiving the 1 Month Notice. In this case, the tenant received the 1 Month Notice on March 29, 2019 and filed his application to dispute it on April 3, 2019. Accordingly, I find that the tenant's application was filed within the ten day limit under the *Act*. Where a tenant applies to dispute a 1 Month Notice within the time limit, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

I find that the landlord did not issue the 1 Month Notice for a valid reason. I find that the City notice, dated February 26, 2019, provided by the landlord, specifically states at page 2 that "it may not be necessary to evict any current occupants while you complete the required work and bring the property into compliance with City by-laws." The City notice required immediately that all keyed bedroom locks be removed and to cease using the building as a rooming house cease. The tenant is agreeable to removing the keyed lock from his door, which is required by the City notice, immediately. If the other

occupants are not willing to do so, this is irrelevant to the tenant and is not within his control.

I further find that the landlord failed to provide the definition of a rooming house as per the City requirements, or to show what had to be done in order to ensure that the house cease operating as a rooming house. I find that the landlord failed to show that the tenant has to be evicted, rather than residing in the house, without keyed locks to his room door.

The City notice required that permits be obtained for unapproved alterations or to remove work carried out without permits, within 60 days of the notice. I accept the tenant's submission that the permits for the alterations only pertain to the lower level of the house, not the upper portion where the tenant resides. The landlord did not dispute this fact during the hearing and did not make any submissions about what alterations were made in the house and what permits were required.

Accordingly, I allow the tenant's application to cancel the landlord's 1 Month Notice. The landlord's 1 Month Notice, dated March 29, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy continues until it is ended in accordance with the *Act*.

### Conclusion

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice, dated March 29, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession.

This tenancy continues 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: May 17, 2019

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Residential Tenancy Branch