



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes: CNC, FFT

### **Introduction:**

The Application for Dispute Resolution filed by the Tenant seeks the following:

- a. An order to cancel the one month Notice to End Tenancy
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

The landlord has not served a one month Notice to End Tenancy. I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the landlord. With respect to each of the applicant's claims I find as follows:

### **Issues to be Decided:**

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order cancelling the Notice to End Tenancy
- b. Whether the tenant is entitled to recover the cost of the filing fee?

### **Background and Evidence:**

The landlord had an oral tenancy agreement with MB that started 27 years ago. In November of 2018 MB entered into an oral sub tenancy agreement with the Tenant. The tenant testified he paid MB rent in the sum of \$625. He also testified he gave MB a security deposit of \$650. At the time the parties entered into the tenancy the parties agreed the tenant would vacate at the end of April 2019 and that MB would be returning.

MB returned in April 2019. The tenant refused to vacate the rental unit. MB subsequently advised the tenant that he was ending the tenancy with the landlord and was vacating.

The landlord and their tenant MB signed a Mutual Agreement to End the Tenancy on May 29, 2019 which set the end of tenancy date for June 30, 2019. MB vacated and removed his belongings.

At all material times the tenant paid his rent to MB. The landlord has not received rent from the Tenant.

The landlord produced considerable evidence that the tenant has significantly damaged the rental unit including the altering of the electrical. He estimates it will cost \$4000 to \$5000 to repair the electrical. The landlord testified the tenant has voided the insurance by operating a business. He has a welding operation which puts an extreme risk of fire. A fire to the premises could result in a loss of \$300,000 to \$400,000. The landlord submitted the rental unit is no longer habitable because of the problems relating to alterations to the electrical made by the Tenant. The landlord produced an Electrical Certificate to that effect.

The tenant testified he wants to stay and is prepared to pay the rent to the landlord. He further testified that he disconnected my extension cord from the breaker and reconnected the 2 wire of the stove back in the breaker. He stated there is no damage. He also stated that he would no longer do any welding on the property. He further testified that MAB (the owner of the property) wants him to stay but the landlord refused to provide him with her phone number.

The landlord testified that MAB is elderly and dealing with her incapacitated husband. She does not want the tenant to stay and does not want to deal with him.

Analysis:

The Application of the Tenant seeks an order to cancel a one month Notice to End Tenancy for Cause. The landlord has not served such a Notice.

I determined that what the tenant was seeking was an order that the Mutual Agreement to End the Tenancy between the landlord and MB was void and that he be entitled to remain in the rental unit as a Tenant.

I made the following determinations.

- The landlord has an oral tenancy agreement with MB which lasted 27 years.
- MB entered into a sub tenancy agreement with the Tenant to rent the rental unit until the end of April 2019.
- MB returned in April but the Tenant refused to move out at the end of April even though MB requested that he do so.
- MB and the landlord have signed a Mutual Agreement to End the Tenancy that set the end of tenancy for June 30, 2019. MB has removed his belongings.
- The tenant has never paid any rent to the landlord.

After carefully considering all of the evidence I determined there is no basis for granting the Tenant's application and his application is dismissed without leave to reapply for the following reasons:

- The tenant does not have a tenancy agreement with the landlord. The tenant has a sub tenancy agreement with MB.
- The tenant's right to live in the rental unit pursuant to the sub tenancy ended when the landlord and MB agreed to end the tenancy effective June 30, 2019 and the tenant had notice of it.
- The landlord does not have a legal obligation to enter into a tenancy agreement with the sub tenant in a situation such as this.

Order:

I dismissed the Tenant's application to cancel a one month Notice to End Tenancy and an order to recover the cost of the filing fee without leave to re-apply. I further determined there is no basis to cancel the Mutual Agreement to End the Tenancy or to make an order that the tenant has a legal right to remain on the property as a Tenant. .

Order of Possession:

The landlord seeks an Order of Possession. After carefully considering the evidence and submissions of the parties I determined that I do not have the legal authority to make such an Order for the following reasons:

The authority to issue an Order of Possession is found in section 55 of the Act which provides as follows:

Order of possession for the landlord

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy **complies with section 52 [form and content of notice to end tenancy]**, and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

(2) A landlord may request an order of possession of a rental unit in any of the following circumstances **by making an application for dispute resolution**:

(a) a notice to end the tenancy has been given by the tenant;

(b) a notice to end the tenancy has been given by the landlord, the tenant has not disputed the notice by making an application for dispute resolution and the time for making that application has expired;

(c) the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

**(c.1) the tenancy agreement is a sublease agreement;**

(d) the landlord and tenant have agreed in writing that the tenancy is ended.

...

I determined that I do not have the authority to issue an Order of Possession under section 55(1). While the tenant's application to cancel the one month Notice to End Tenancy was dismissed, the authority to grant an Order of Possession only applies if the landlord has given a Notice to End Tenancy in the approved form and that it complied with section 52 of the Act. The landlord has not served a Notice to End Tenancy.

The landlord would have been entitled to an Order of Possession under section 52(2)(c.1) had the landlord made an application for dispute resolution. However, the landlord has not filed such an Application for Dispute Resolution. .

In summary I determined that I do not have legal authority to grant an Order of Possession. The landlord has the right to file an Application for Dispute Resolution in accordance with the Residential Tenancy Act seeking such an Order. The parties are encouraged to seek legal assistance.

**This decision is final and binding on the parties.**

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: July 25, 2019

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Residential Tenancy Branch