



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding WALL HOLDINGS LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act ("Act"). The tenant applied for an order cancelling the landlord's One Month Notice to End Tenancy for Cause (the "Notice").

The tenant and the landlord's agents representing the owner attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, no issues were raised regarding service of the application or the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all relevant evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Preliminary Issue

At the beginning of the hearing and for 10 minutes, only the landlord's agents were in the hearing. Following that, the tenant and her support worker dialed in and fully participated in the hearing.

In response to my inquiry, the landlord's agent, NH, confirmed that they had not provided any documentary evidence. I informed the landlord that the tenant provided a

copy of the Notice; however, the tenant's documentary evidence was in a format I was unable to view.

I allowed the landlord to provide a copy of the Notice during the hearing.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the landlord's Notice?

### Background and Evidence

There was no written tenancy agreement provided. The tenant said her tenancy began in the rental unit on or about July 1, 2015.

The current landlord is a new owner, having taking ownership of the residential property sometime in August 2019. The landlord's agents here represented the new owner.

The landlord said that the Notice was signed and delivered to the tenant on September 30, 2019, by attaching it to the tenant's door. The effective move-out date listed was November 2, 2019.

The Notice listed two causes claimed by the landlord, which were that the tenant is repeatedly late in paying rent and that the tenant or a person permitted on the property by the tenant has put the landlord's property at risk.

In support of the Notice, landlord's agent NH, provided the testimony.

NH said that they evicted a tenant from another unit in the building in August 2019, and afterwards, they have seen this evicted tenant entering the building. This caused the landlord to issue a warning letter to all the tenants of the building that they were not to let the evicted tenant into the building, or they would themselves be evicted. The landlord's agent submitted a copy of the letter along with the Notice he sent in during the hearing. I note that I did not allow the landlord's agent to submit this letter along with the Notice.

Despite being issued the warning letter, the landlord's agent, RH, said that he saw the evicted tenant enter the tenant's rental unit and another rental unit on the same floor.

The landlord's agent said that the evicted tenant is dangerous and had to be removed by a large number of police. The landlord's agent said that they have seen people in the laundry room doing drugs and as the locks to the residential property have been broken so many times, they have now stopped repairing or replacing the locks to the building.

As to the late payments of rent, the landlord's agent said the tenant was late in paying rent for September and they served the tenant a 10 Day Notice to End Tenancy for Unpaid Rent.

*Tenant's response-*

The tenant said she had been looking after the evicted tenant's dog and when she received the warning letter, she did not realize it referred to the evicted tenant, as no name was listed. Once she became aware of the evicted tenant's name, she returned the dog and said she could not look after it anymore.

The tenant submitted the evicted tenant has not come into her rental unit since that time and denied RH's testimony that he entered her suite in late September.

The tenant agreed that she has seen the evicted tenant in the building, but he has not been in her rental unit.

Analysis

After reviewing the relevant evidence, I provide the following findings, based upon a balance of probabilities:

When a tenant disputes a Notice, the burden of proof reverts to the landlord to prove that the Notice is valid and should be upheld. If the landlord fails to prove the Notice is valid, the Notice will be cancelled.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met their obligation to prove their claim and the claim fails.

I informed the landlord in the hearing that I would not consider whether the tenant has made repeated late rent payments.

Residential Tenancy Policy Guideline 38 provides that three late payments are the minimum number sufficient to justify a notice under these provisions.

As the landlord has claimed only one late payment, I find that is not sufficient to end this tenancy. Additionally, I find the landlord has not submitted any evidence of when the rent payment was received or how it was received. The Notice fails on this listed cause.

As to the second cause listed, I find the landlord submitted insufficient evidence that the tenant or a person permitted on the property has put the landlord's property at significant risk. The landlord provided no documentary evidence that the tenant has allowed the evicted tenant into her rental unit and she has denied that to be the case.

Further, I find the landlord's warning letter to the tenants in the residential property to be insufficient to put them on notice, as the letter did not provide the name.

I was further persuaded by the landlord's own evidence that as the locks to the residential property are now broken and are not being fixed, the evicted tenant would have ease of access into the building unrelated to the tenant's actions.

Due to the above reasons, I find that the landlord provided insufficient evidence to prove the causes listed on the Notice.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause, dated September 30, 2019, for an effective move out date of November 2, 2019, is not valid and not supported by the evidence, and therefore has no force and effect.

I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

### Conclusion

The landlord's Notice of September 30, 2019, is cancelled.

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 12, 2019

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Residential Tenancy Branch