



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MISSION DISTRICT SENIOR HOUSING  
ASSOCIATION and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MT, CNC, MNDCT

### Introduction

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

- more time to make an application to cancel the landlord's 1 Month Notice to End Tenancy for Cause, dated August 30, 2019, pursuant to section 66;
- cancellation of the landlord's 1 Month Notice, pursuant to section 47; and
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("Regulation") or tenancy agreement, pursuant to section 67.

The landlord's three agents, the tenant, and the 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. This hearing lasted approximately 64 minutes. The landlord spoke for most of the hearing time, at approximately 42 minutes, while the tenant spoke for approximately 10 minutes.

The hearing began at 9:30 a.m. with all parties present. The three landlord agents unexpectedly disconnected from the hearing at 10:28 and returned at 10:29 a.m., citing a telephone issue. I informed the three landlord agents about what occurred in their absence and that I did not discuss any evidence with the tenant. The hearing ended at 10:34 a.m.

The landlord's manager of tenant services DS ("landlord"), the landlord's male resident caretaker PW ("landlord PW"), the landlord's female resident caretaker LW ("landlord LW"), all confirmed that they had permission to represent the landlord company named in this application. The tenant confirmed that his advocate had permission to speak on his behalf.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant's 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 personal receipt of the landlord's 1 Month Notice on August 30, 2019. The landlord confirmed that the notice was served on the above date using the above method. The 1 Month Notice indicates an effective move-out date of September 30, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was personally served with the landlord's 1 Month Notice on August 30, 2019.

#### Preliminary Issue – Severing a Portion of the Tenant's Application

Rule 2.3 of the RTB *Rules of Procedure* states that claims made in an application must be related to each other and that an Arbitrator has discretion to dismiss unrelated claims with or without leave to reapply.

In this application, the tenant applied to cancel a notice to end tenancy as well as a monetary order for compensation of \$1,250.00. After 64 minutes, I ended the hearing after the parties presented their submissions regarding the end of tenancy issue and the 1 Month Notice. There was no additional time for the parties to provide substantive submissions regarding the tenant's monetary application.

Accordingly, the tenant's monetary application for \$1,250.00 is dismissed with leave to reapply. The tenant is required to file a new application and pay a new filing fee if he wishes to pursue that matter further.

#### Issues to be Decided

Is the tenant entitled to more time to make an application to cancel the landlord's 1 Month Notice?

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

#### 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 principal aspects of the tenant's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2016. A written tenancy agreement was signed by both parties. Monthly rent in the amount of \$425.00 is payable on the first day of each month. A security deposit of \$212.50 was paid by the tenant and the landlord continues to retain this deposit. The tenant continues to reside in the rental unit.

A copy of the landlord's 1 Month Notice was provided for this hearing. Both parties agreed that the 1 Month Notice was issued for the following two reasons:

- *Tenant or a person permitted on the property by the tenant has:*
  - *significantly interfered with or unreasonably disturbed 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 provided photos and letters to support its 1 Month Notice. The landlord testified that the parties' written tenancy agreement indicates that the tenant is not entitled to carry on business at the rental unit and the landlord is required to maintain the rental premises in a state of decoration and repair that maintains health, safety, and housing standards.

The landlord provided a copy of a letter accompanying the 1 Month Notice, indicating that the tenant does the following at the rental property:

- 1) the tenant is using non-assigned storage space at the rental property, to store personal items for many months;
- 2) the tenant has 6 bikes, rather than the limit of 1 bike, in the bike storage room at the rental property for many months;
- 3) the tenant has partially assembled electric scooters and their parts in the barbeque and tool storage room at the rental property for many months;
- 4) the tenant leaves lumber and dirty scooter and bike parts on floors and non-assigned storage spaces at the rental property for many months, which is unsightly, restricts common area space, and creates a fire hazard;

- 5) the tenant stores or leaves items in the common areas, such as hallways, at the rental property for many months, causing unsightliness and a fire hazard;
- 6) the tenant stores more items in the above spaces for many months, despite warnings from the landlord, causing unsightliness and a fire hazard; and
- 7) the tenant goes on to the roof at the rental property without authorization.

The landlord stated that the tenant has multiple scooters, which are not his grandson's scooter, as claimed by the tenant. The landlord maintained that the tenant has been warned by the landlord multiple times, verbally and in writing, and the tenant asked for more time to remove his items.

The tenant claimed that he was late when filing this application to dispute the 1 Month Notice because he was unable to obtain assistance from his advocate or other agents in time. He claimed that he does not know how to use a computer to file his application, he had to go to a local SBC office, and he does not drive or have money for the bus, so he had to sell bottles to earn money. The tenant's advocate confirmed that she was not available initially to assist the tenant and her office was busy with other clients.

The tenant stated that he was provided with an assigned storage space for his scooter at the rental property. He said that he bought his scooter in July 2019, so the landlord was incorrect in stating he had it stored for "many months." The tenant confirmed that he only has three bikes, two of which are his, and one of which is his grandson's, not "many bikes" as alleged by the landlord. He confirmed that he has three storage lockers at the rental property: he was given two storage lockers by landlord PW and another storage locker from another tenant in the rental building.

The tenant maintained that he was fixing his grandson's bike for his birthday; he does not run a business at the rental property. He said that he does not store bikes for other people at the rental property. He claimed that he did not leave a shopping cart in the hallway at the rental building. He stated that he does not go out onto the roof of the rental building alone. The tenant's advocate maintained that the landlord issued a frivolous 1 Month Notice and that the photographs provided by the landlord and tenant do not prove any issues of unsightliness or blockage of fire lanes.

### 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 August 30, 2019 and filed his application to dispute it on September 13, 2019. Accordingly, I find that the tenant's application was not filed within the ten-day time limit under the *Act*.

Section 47(1)(d) of the *Act* permits the landlord to issue a 1 Month Notice only if one of the above two reasons apply. I find that the landlord did not issue the 1 Month Notice for valid reasons.

I find that the landlord failed to show that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord. I find that the landlord failed to provide sufficient evidence that the storage of the tenant's bikes and scooters at the rental property caused "significant" interference or "unreasonable" disturbance. While the landlord may be annoyed or irritated by the tenant's storage of items and asking him to clear these items, I do not find this to be significant or unreasonable. The landlord complained that the rental premises was unsightly and a fire hazard, but I find that the landlord failed to provide sufficient evidence of same. I find that the landlord's photographs do not demonstrate the above allegations.

I also find that the landlord failed to show that the tenant breached a material term of the parties' written tenancy agreement. I find that the landlord failed to show that proper storage is a "material" term of the tenancy agreement. I also find that the tenant complied with the landlord's requests regarding storage of his bikes, as he affirmed that he only stores one bike in the storage room, upon being questioned by the landlord during the hearing. I find that the tenant is not carrying on a business at the rental property, as I accept the tenant's affirmed testimony that he was simply fixing his grandson's bike.

Therefore, I find that the tenant does not require an extension of time to cancel the 1 Month Notice because the notice was invalid from the outset. The tenant did not apply past the effective date of September 30, 2019 in the 1 Month Notice.

The landlord's 1 Month Notice, dated August 30, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession. This tenancy will continue until it is ended in accordance with the *Act*.

### Conclusion

The tenant does not require an extension of time to file his application to dispute the 1 Month Notice.

The tenant's application to cancel the landlord's 1 Month Notice is allowed. The landlord's 1 Month Notice, dated August 30, 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: November 16, 2019

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Residential Tenancy Branch