



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDCT, OLC, FFT

### 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 September 17, 2019 ("1 Month Notice") pursuant to section 47;
- a monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement, pursuant to section 62; and
- authorization to recover the filing fee for this application, pursuant to section 72.

Both parties 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 75 minutes.

The landlord confirmed receipt of the tenant's application for dispute resolution hearing package and the tenant 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 claimed that he could not see the landlord's digital evidence on the USB drive. The landlord said that he did not check whether the tenant could see the evidence before the hearing. I notified the landlord that I could not consider his USB digital evidence at this hearing or in my decision because he did not confirm that the tenant could see or hear it, as required by Rule 3.10.5 of the Residential Tenancy Branch *Rules of Procedure*.

The tenant confirmed personal receipt of the landlord's 1 Month Notice on September 17, 2019. The landlord confirmed service of the notice using the above method. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice on September 17, 2019.

The tenant did not provide any evidence for his application for an order for the landlord to comply with the *Act*, *Regulation* or tenancy agreement. Therefore, this application is dismissed without leave to reapply.

### 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?

Is the tenant entitled to a monetary order for compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the tenant entitled to recover the filing fee for this application?

### 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 are reproduced here. The important and relevant aspects of the tenant's claims are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2018. Monthly rent in the amount of \$1,500.00 is payable on the first day of each month. A security deposit of \$750.00 was paid by the tenant and the landlord continues to retain this deposit. A written tenancy agreement was signed by both parties. The tenant continues to reside in the rental unit.

Both parties agreed that the landlord's 1 Month Notice indicates an effective move-out date of October 18, 2019. Both parties agreed that the landlord indicated the following reason on the notice:

- *Tenant has assigned or sublet the rental unit/site without landlord's written consent.*

The tenant seeks to cancel the 1 Month Notice and to recover the \$100.00 application filing fee. The landlord seeks an order of possession based on the 1 Month Notice.

The landlord said that he issued the 1 Month Notice because the tenant is operating a massage business from his rental unit. He stated that the tenant has people coming in and out of his rental unit all the time, and he has video surveillance proof of it. He claimed that the tenant left town for 10 to 12 days and a woman, who was running the massage business, might have been staying at the tenant's rental unit. He maintained that people do not stay at the tenant's rental unit for 24 hours per day, but he said they go there 7 days per week, and he does not know if they stay overnight. He explained that he was told that these people have their own homes. He confirmed that he gave the tenant the 1 Month Notice when he returned from his trip out of town.

The tenant disputes the landlord's 1 Month Notice because he said that he did not assign or sublet his rental unit to anyone. He said that he did not collect rent from anyone, sign a new sublease tenancy agreement with anyone, or assign his tenancy to anyone else. He confirmed that he has guests visit him at his rental unit, but they do not sleep overnight. He explained that he had people visiting at his rental unit while he was out of town because they were doing housekeeping for him.

The tenant seeks a monetary order of \$6,000.00 for a loss of quiet enjoyment and safety issues from September 1, 2018 to August 31, 2019. He seeks \$400.00 for excessive dust outside his rental unit from "non complete paving." He seeks \$400.00 for "extra wear & tear" from potholes in the parkade driveway at the rental property. He seeks \$400.00 for "incomplete carpeting" in the hallways of the rental building and \$400.00 for "lack of paint on hallways." He seeks \$1,200.00 for no emergency lighting in the stairwell at the rental property and \$400.00 for a safety issue with the parkade door lock. Finally, he seeks a "lack of quiet enjoyment" of \$2,800.00.

The landlord disputes the tenant's monetary application of \$6,000.00. He said that the tenant's claim has no merit. He maintained that the tenant should not be having a woman running a massage business out of his rental unit.

## Analysis

### 1 Month Notice

According to subsection 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. The tenant received the 1 Month Notice on September 17, 2019 and filed his application to dispute it on September 26, 2019. Accordingly, I find that the tenant's application was filed within the ten-day time limit under the *Act*. Where a tenant applies to dispute a 1 Month Notice within the timeline, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the 1 Month Notice is based.

On a balance of probabilities and for the reasons stated below, I find that the landlord did not issue the 1 Month Notice for valid reasons.

An assignment is defined in Residential Tenancy Policy Guideline 19, in part:

*Assignment is the act of permanently transferring a tenant's rights under a tenancy agreement to a third party, who becomes the new tenant of the original landlord.*

A sublet is defined in Residential Tenancy Policy Guideline 19, in part:

*When a rental unit is sublet, the original tenancy agreement remains in place between the original tenant and the landlord, and the original tenant and the subtenant enter into a new agreement (referred to as a sublease agreement). Under a sublease agreement, the original tenant transfers their rights under the tenancy agreement to a subtenant. This must be for a period shorter than the term of the original tenant's tenancy agreement and the subtenant must agree to vacate the rental unit on a specific date at the end of sublease agreement term, allowing the original tenant to move back into the rental unit.*

When I asked the landlord what an assignment or sublet meant, he did not know. He said that when the tenant had other people coming into his unit and staying there, regardless of whether or not they stayed overnight, it was a sublet or assignment. He also said that an assignment and sublet included other people running a business out of the tenant's rental unit.

I find that the landlord failed to prove that the tenant assigned or sublet his rental unit without the landlord's written consent. The tenant did not assign his tenancy to anyone else and permanently leave the rental unit. The landlord agreed that the tenant was still paying rent and living in the rental unit under a valid written tenancy agreement with the landlord. The tenant did not leave the rental unit and transfer his rights to another tenant under a sublease tenancy agreement. The tenant did not sign any agreements with other tenants or collect rent from anyone. The tenant is permitted to have guests visit him at the rental unit.

Accordingly, I allow the tenant's application to cancel the 1 Month Notice. The landlord's 1 Month Notice, dated September 17, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for cause. This tenancy continues until it is ended in accordance with the *Act*.

#### Monetary Application

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove a loss, the tenant must satisfy the following four elements on a balance of probabilities:

- 1) Proof that the damage or loss exists;
- 2) Proof that the damage or loss occurred due to the actions or neglect of the landlord in violation of the *Act*, *Regulation* or tenancy agreement;
- 3) Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- 4) Proof that the tenant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Entitlement to quiet enjoyment is defined in Residential Tenancy Policy Guideline 6, in part (my emphasis added):

*A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means **substantial interference with the ordinary and lawful enjoyment of the premises**. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.*

**Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment.** *Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.*

*In determining whether a breach of quiet enjoyment has occurred, it is **necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.***

On a balance of probabilities and for the reasons stated below, I dismiss the tenant's monetary application of \$6,000.00 without leave to reapply.

I find that the tenant was unable to prove parts 1, 2, 3 and 4 of the above test. The tenant was unable to show how his complaints caused him losses. He did not show how the carpet and the paint in the hallways at the rental building devalued his tenancy. He was unable to demonstrate how he suffered losses from "safety issues" he identified of no emergency lighting and the parkade door lock. He did not show how the dust and the potholes affected his health or caused him losses in other ways.

The tenant was unable to provide invoices, receipts, or other documents to prove the amounts claimed. The tenant failed to provide medical records, wage loss documents, or other documents to prove his losses. The tenant simply chose random numbers for the losses he said he suffered over a one-year period.

I find that the tenant failed to provide sufficient evidence of a loss of quiet enjoyment. I find that the tenant failed to show a "substantial" interference beyond "temporary discomfort," as per Residential Tenancy Policy Guideline 6, above.

As the tenant was partially successful in this application, I find that he is entitled to recover the \$100.00 filing fee from the landlord. I order the tenant to deduct \$100.00 total from his future monthly rent due to the landlord at the rental unit, in full satisfaction of the award for the application filing fee.

### Conclusion

The landlord's 1 Month Notice, dated September 17, 2019, is cancelled and of no force or effect. The landlord is not entitled to an order of possession for cause. This tenancy continues until it is ended in accordance with the *Act*.

I order the tenant to deduct \$100.00 total from his future monthly rent due to the landlord at the rental unit, in full satisfaction of the award for the application filing fee.

The remainder of the tenant's application is dismissed without leave to reapply.

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: December 05, 2019

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Residential Tenancy Branch