



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

On February 7, 2020, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month to End Tenancy for Cause, (the “Notice”) issued on January 31, 2020, and to recover the filing fee for this application. The matter was set for a conference call.

The Landlord, represented by two Property Managers (the “Landlord”) and the Tenant, represented by the Tenant and their Advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

- Should the Notice issued on January 31, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Is the Tenant entitled to the recovery of the filing fee of their application?

### Background and Evidence

The Landlord testified that the tenancy began on April 14, 2010, and that rent was \$325.00 per month. However, the Landlord also testified that rent had been recorded as \$541.00 per month on the tenancy agreement, and that they were holding a \$270.00 security deposit for this tenancy. The Landlord was not able to account for this discrepancy.

The Landlord testified that they served the Notice to end tenancy to the Tenant on January 31, 2020, by personal service. Both the Landlord and the Tenant provided a copy of the Notice into documentary evidence.

The reason checked off within the Notice is as follows:

- *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 testified that on January 30, 2020, the Tenant verbal assaulted the grounds keeper and one of the Property Managers. The Landlord testified that the Tenant called the grounds keeper an idiot and told the Property Manager to “F” off.  
[Swearing abbreviated for the record]

The Tenant agreed that he did call the grounds keeper an idiot and that he had told the Property Manager to “F” off.  
[Swearing abbreviated for the record]

The Landlord testified that the verbal incident of January 30, 2019, had significantly disturbed the employees of the Landlord and the other residents of the rental Property. The Landlord testified that the Tenant was very aggressive in his behaviour during this incident and that there had been several other incidents of aggressive behaviour by this Tenant in the past. The Landlord testified that due to the Tenant's pattern of aggressive behaviour that they had no other option but to end this tenancy to protect their employees and the other occupants of the rental property. The Landlord submitted three witness statements, of the January 30, 2020, incident into documentary evidence.

The Tenant testified that they had been upset that the Landlord's decision to remove a street light by his rental unit, instead of repairing the light, The Tenant testified that they had been upset when they spoke to the ground keeper and the Property Manager but that the Property Manager was aggressive towards them and that they had responded in kind.

The Landlord testified that they have issued three warning notices to the Tenant regarding the Tenant's behaviour towards staff and other residents, as well as the Tenant's inappropriate use of foul language. The Landlord submitted five letters that had been sent to the Tenant, dated between October 4, 2015 to July 7, 2017, into documentary evidence.

The Tenant testified that those incidents had all been resolved, years ago, and should not be considered in these proceedings.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I find that the Tenant received the Notice to End Tenancy on January 31, 2020. Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. I find the Tenant had until February 10, 2020, to file their application to dispute the Notice. The Tenant filed their application on February 7, 2020, within the statutory time limit.

The Landlord indicated two reasons on the Notice as the cause for ending the Tenant's tenancy; I will address each one individually:

- 1) Significantly interfered with or unreasonably disturbed another occupant of the landlord.

I accept the agreed upon testimony of these parties that there had been a verbal incident between one of the Property Managers and the Tenant on January 30, 2020 and that the Tenant swore at the Property Manager during this verbal incident.

I have reviewed the testimony in this case, and I find that the parties, have offered conflicting verbal testimony regarding the level of aggressiveness involved in the verbal incident of January 30, 2020. In cases where two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making a

claim has the burden to provide sufficient evidence over and above their testimony to establish their claim, in this case, that would be the Landlord.

I have reviewed of the Landlord's documentary evidence, the three witness statements, submitted to support their claim. I have reviewed those statements with an eye to this portion of the Landlord's claim. After careful review, I find that these statements show an uncomfortable and heated exchange between the Property Manager and the Tenant. However, I find them to be insufficient evidence, to satisfy me, that this verbal incident caused such significant interference to warrant the end of this tenancy. Therefore, I find the Landlord has failed met the onus to establish their claim on this point.

2) Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so.

I accept the testimony of the Landlord that three written warnings had been given to the Tenant throughout the history of this tenancy, regarding the required behaviour of a Tenant on the rental property. However, I find that the last of these three warning notices had been issued 938 days (over 2 ½ years) before the verbal incident of January 30, 2020. I also noted that the Landlord presented no evidence of incidences of a breach of the behaviour term of this tenancy agreement, by the Tenant in the 2 ½ years since the last warning notice was issued. Therefore, I find that sufficient time had passed without a recorded incident between the previously dated waring notice of July 7, 2017, that it can no longer be relied on as written notice of a breach for the incident of January 30, 2020.

I find that I new written notice is required to be provided to the Tenant regarding a new breach to a material term of this tenancy agreement. Due to the failure of the Landlord to issue a written notice to the Tenant of a breach of a material term, before they issued the Notice to End Tenancy, I find the Landlord has failed met the requirements to end the tenancy on this point.

Conclusively, I find that the Landlord has not proven sufficient cause, to satisfy me, to terminate the tenancy for any of reasons indicated on the Notice they issued. Therefore, I grant the Tenant's application to cancel the Notice dated January 31, 2020, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the Act.

The Tenant is cautioned, that further breaches to the behaviour term of their tenancy agreement may result in sufficient grounds to end their tenancy. As the Landlord has

not submitted a copy of the tenancy agreement to these proceedings, I am not able to speak directly to the term of the tenancy agreement in which the Landlord has referenced during this hearing.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in their application to dispute the Notice, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application. The Tenant is allowed to take a one-time deduction of \$100.00, from their next month's rent in satisfaction of this award.

### Conclusion

The Tenant's application to cancel the Notice, dated January 31, 2020 is granted. The tenancy will continue until legally ended in accordance with the Act.

I grant the Tenant permission to take a one-time deduction of \$100.00, from their next month's rent.

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: April 20, 2020

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Residential Tenancy Branch