



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

On May 4, 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”) dated March 13, 2020, and for an order for the Landlord to comply with the *Act*. The matter was set for a conference call.

The Landlord as well as 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 requires 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, dated March 13, 2020, be cancelled?
- If not, is the Landlord entitled to an order of possession?
- Should the Landlord be ordered to comply with the *Act*?

## Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The Landlord testified that they served the Notice to end tenancy to the Tenant on March 13, 2020, by personal service. The Landlord submitted a copy of the Notice and a proof of service form 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*
  - *Seriously jeopardized the health or safety or lawful right of another occupant or the landlord*
  - *Put the landlord's property at significant risk.*
- *Tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.*
- *Rental unit/site must be vacated to comply with a government order.*

The Tenant testified that they were not personally served the Notice to End Tenancy on March 13, 2020. The Tenant testified that they did receive a copy of the Notice via WhatsApp on March 14, 2020, but that was not official service. The Tenant testified that they were served with the paper Notice to End Tenancy, by mail, on April 25, 2020, when they received the Landlord's evidence package for the previous hearing between these parties, and that they filed to dispute the Notice, on May 4, 2020.

The Landlord testified that on March 12, 2020, the Tenant and their boyfriend got into a fight, that frightened the other occupants of the rental property, and that the fight resulted in \$300.00 worth of damage to the rental property.

The Landlord testified that the incident of March 12, 2020, was very loud, and that another occupant of the building had been chased. When asked to provide details of the event, the Landlord was unable to explain what had happened and how the other occupant became involved in the Tenant's fight with their boyfriend. The Landlord pointed this Arbitrator to the written statements from the other occupants of the building, for the details of what had happened. The Landlord testified that another occupant of the building had moved out due to this event. However, the Landlord then changed their testimony, stating that the other occupant unit was still residing on the property. The

Landlord submitted two written statements from the other occupants of the rental property into documentary evidence.

The Landlord testified that the Tenant's boyfriend damaged the front door of the rental unit on March 12, 2020, and that they had to pay \$300.00 to have the door repaired. The Landlord then testified that the Tenant had damaged the front door of the rental unit a second time. When asked, by this Arbitrator, for details of the event surrounding the second claim of damage to the front door of the rental unit, the Landlord was unable to testify to the facts of that event and became verbally upset with this Arbitrator for asking for more information.

The Tenant agreed that they did have a domestic dispute with their boyfriend on March 12, 2020, and that the door to the rental unit was damaged during that dispute, but that they had repaired the damage to the door themselves.

The Tenant testified that they are now separated from the individual who was involved in the incident on March 12, 2020, and that they have obtained a no-contact order for this individual. The Tenant testified that they feel the issues have been resolved and will not happen again.

The Landlord was asked to testify to the third reason listed on the Notice and provide the details of the government order they had received. The Landlord testified that a city officer had attended the rental property and told them that they need to shut down all of the rentals in the building. When asked if the Landlord had received a written order, the Landlord testified that they had received a written order. However, the Landlord then changed their testimony, stating that they had not received a written order, just a verbal request to shut the rental property down.

The Tenant testified that there was no order to shut down the rental property and that no other renter on the property received a notice to end their tenancy for that reason.

The Landlord testified that they had given notices to end the other tenancy's in the rental building; however, they also confirmed that the other renters are still living on the rental property.

The Tenant testified that they are also seeking an order for the Landlord to comply with the restriction on attending the rental property during the current state of emergency that was declared due to the COVID-19 pandemic.

The Landlord testified that they understood the restriction on accessing a rental unit under Provincial Government Emergency Order.

### Analysis

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

Throughout these proceedings, I find that the Landlord was unprepared to testify to the details of the events in this case and repeatedly changed their testimony. Specifically, the Landlord provided conflicting testimony regarding the existence of a municipal order to shut down the rental unit, they were unable or unwilling to testified to dates of events of damage to the rental unit and changed their testimony regarding the status of current tenancy on the rental property.

Also, when I compared the Landlord's testimony to the two witness statements submitted by the Landlord, to support their claims regarding events that took place on March 12, 2020, I find that neither of the witness statements provided speaks of events on the date in question.

For the reasons stated above, I find that I am in doubt of the credibility of the Landlord's testimony on the whole and that this doubt has led me to question the validity of the Landlord's claims regarding the service of this Notice to End Tenancy.

During these proceedings, the parties offered conflicting verbal testimony regarding the service of the Notice to End Tenancy. 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, it is the Landlord who holds the burden of proof.

I have reviewed the Landlord's proof of service form for the service of the Notice to End Tenancy, and I find that, when combined with the inconsistent, and contradictory testimony provided by the Landlord during these proceedings, I am not satisfied with the use of a family member, acting as the witness for this service. Also, after reviewing the entirety of the Landlord's documentary evidence, I noted that the Landlord's written statement, that they submitted into documentary evidence, recorded that the Notice had been served by posting it to the front door of the rental unit, which again is contradictory to the Landlord's testimony of personal service and proof of service form.

On a balance of probabilities, I find that the Landlord has not provided sufficient or compelling evidence to persuade me that the Notice had been served in accordance with the *Act*. Based on the pattern of behaviour and actions of the Landlord during these proceedings, I find it more likely than not that this Notice was not served to the Tenant in accordance with the *Act*, on March 13, 2020, as the Landlord has claimed.

Due to this, I accept the Tenant's testimony that they were served the Notice to End Tenancy on April 25, 2020.

As for the validity of the Notice itself, overall, I find it difficult to reconcile the inconsistent, contradictory, and dubious nature of the Landlord's testimony during these proceedings; which causes me to doubt the Landlord's credibility on the whole. As such, I am not satisfied, on a balance of probabilities, of the validity of this Notice on any of the grounds in which it was issued. Ultimately, I find that the Notice of March 13, 2020, is of no force and effect.

As for the Tenant's request for an order for the Landlord to comply with the *Act*. The Tenant has expressed concerns regarding the Landlord's compliance with the Provincial Emergency Order that places restrictions on a Landlord's right to attending the rental property during the current state of emergency. The Landlord and Tenant's rights and responsibilities under the Provincial Government Emergency Order were reviewed with both parties during these proceedings.

Conclusion

The Tenant's application to cancel the Notice, dated March 13, 2020, is granted. The tenancy will continue until legally ended in accordance with the Act.

The Landlord is ordered to comply with the Provincial Government Emergency Order and respect the Tenant's request not to enter the rental unit during the state of emergency.

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: June 9, 2020

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Residential Tenancy Branch