



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 634 EAST GEORGIA ST HOLDING  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

On May 10, 2021, 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 March 5, 2021. The matter was set for a conference call.

The Landlord, represented by a Property Manager (the “Landlord”) and the Tenant, represented by the Tenant and their Counsel (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. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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. Both parties were advised of section 6.11 of the Residential Tenancy Branches Rules of Procedure, prohibiting the recording of these proceedings.

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 March 5, 2021, be cancelled?
- If not, is the Landlord entitled to an order of possession?

### Background and Evidence

While I have considered 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 tenancy agreement recorded that the tenancy began on August 1, 2011, and that rent initially started at \$950.00 per month, and that the Landlord collected a 475.00 security deposit for this tenancy. Both the Tenant and the Landlord submitted a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they served the Notice to end tenancy to the Tenant on March 5, 2021, by posting the Notice to the front door of the rental unit. 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:*
  - *Put the landlord's property at significant risk*
- *Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park*

The Landlord testified that on March 1, 2021, a water leak was reported to the building manager. When the leak was investigated, it was discovered that the water was coming from the Tenant's rental unit. The Landlord testified that the building manager knocked on the Tenant's door, but when they got no answer, they entered the rental unit due to the emergency nature of this event.

The Landlord testified that when the building manager entered the rental unit, they found the Tenant asleep in the bedroom and that they were unable to wake the Tenant. The Landlord testified that the building manager then entered the bathroom of the rental unit and found the water faucet on, pushed to the side of the sink and running water over the counter and floor of the rental unit. The Landlord submitted a copy of a statement from the building manager into documentary evidence.

The Landlord testified that it is their belief that the Tenant came home in an intoxicated state, used the bathroom, left the water running and caused the water damage to the building. The Landlord testified that due to the damage caused by this Tenant, they decided to end this tenancy.

The Tenant testified that they were very tired when they got home and that they were not intoxicated, but that they work nights, sleep during the day, and that they sleep soundly. The Tenant testified that they did not leave the water running and that they did not cause the flood. The Tenant testified that they believe the mirror at the sink fell off the wall at some point when they were sleep and that it was the falling mirror that knocked the water faucet into the on position and pushed the faucet to the side, so the water was flowing on to the counter and floor.

The Tenant testified that they did not cause this damage and that their tenancy should not end due to this freak accident of the mirror falling off the wall.

### Analysis

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

I find that the Tenant received the Notice to End Tenancy, three days after it was posted to the front door of the rental unit, on March 8, 2021. Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. I find the Tenant had until March 18, 2021, to file their application to dispute the Notice. I have reviewed the Tenant's application, and I find that the Tenant filed their application on March 10, 2021, 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 them both together as they both steam from the same event.

I accept the agreed-upon testimony of these parties that there had been a flood at the rental property on March 1, 2021, and that the water from this flood originated in the Tenant's rental unit.

I have reviewed the testimony in this case, and I find that the parties have offered conflicting verbal testimony regarding the cause of the March 1, 2021 flood. 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 the Landlord's documentary evidence, including their witness statement, submitted to support their claim, and after a careful review, I find there to be insufficient evidence, to satisfy me, that this flood was caused by the actions of this Tenant.

Therefore, I find that the Landlord has not proven sufficient cause, to satisfy me, to terminate the tenancy for any of the reasons indicated on the Notice they issued. Therefore, I grant the Tenant's application to cancel the Notice issued March 5, 2021, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the Act.

### Conclusion

The Tenant's application to cancel the Notice, issued March 5, 2021, is granted. The tenancy will continue until legally 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: September 20, 2021

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Residential Tenancy Branch