



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding LAKESHORE REALTY and  
[tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** CNC OLC

### **Introduction**

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's dispute resolution application ('Application'). In accordance with section 89 of the *Act*, I find that the landlord was duly served with the Application. The tenant confirmed receipt of the landlord's evidentiary materials. In accordance with section 88 of the *Act*, I find the tenant duly served with the landlord's evidence.

The tenant confirmed receipt of the 1 Month Notice dated January 2, 2023, which was posted on the tenant's door. I find the tenant duly served with the 1 Month Notice.

### **Preliminary Issue: Late Evidence**

The tenant submitted their evidence to the RTB on May 1, 2023. The landlord testified that they were not served with these materials.

Rule 3.14 of the RTB's Rules of Procedure establishes that a respondent must receive evidence from the applicant not less than 14 days before the hearing. The definition section of the Rules contains the following definition:

In the calculation of time expressed as clear days, weeks, months or years, or as "at least" or "not less than" a number of days weeks, months or years, the first and last days must be excluded.

I am not satisfied that the tenant applicant served the landlord with their evidentiary materials in accordance with section 88 of the Act, nor am I satisfied that this evidence was submitted to the RTB not less than 14 days before the hearing.

As the landlord did not have an opportunity to review these materials before the hearing, the tenant's evidence was excluded for the purposes of this hearing.

### **Preliminary Issue: Adjournment of Hearing**

The tenant requested an adjournment of the hearing. The applicant testified that they suffer from autism and attention deficit disorder, and require the assistance of an advocate. The tenant testified that they had spoken to an advocate, who was not available.

The landlord was opposed to the adjournment as they were ready to proceed, and the matter has been outstanding for some time. The landlord testified that the tenancy was a problematic one as demonstrated by the fact that the tenant was served with a 1 Month Notice as well as a 10 Day Notice to End Tenancy for Unpaid Rent. The landlord expressed the need for an urgent resolution, and felt that an adjournment would be extremely prejudicial for the landlord.

The criteria provided for granting an adjournment, under Rule 6.4 of the Residential Tenancy Branch Rules of Procedure are;

- whether the purpose for the adjournment is sought will contribute to the resolution of the matter in accordance with the objectives set out in Rule 1...
- whether the adjournment is required to provide a fair opportunity for a party to be heard, including whether the party had sufficient notice of the dispute resolution hearing...
- the degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking the adjournment; and

- the possible prejudice to each party.

I informed parties that I would not be granting an adjournment of this matter. Although I am sympathetic about the tenant's concerns, I find that the tenant was able to articulate themselves and communicate very well during the hearing, and seemed well aware of the issues before them. Furthermore, I find that it would be prejudicial to the landlord as the matter pertains to a notice to end tenancy, and the landlord was ready to proceed with the application that was filed by the tenant on January 6, 2023. Despite the fact that the tenant was served in early January 2023 with this 1 Month Notice, the tenant has not submitted any evidence to support their efforts in seeking the assistance of an advocate. Not only do I find that an adjournment is not necessary or would contribute to a resolution of this matter, I find that an adjournment would be extremely prejudicial to the landlord as the effective date of the 1 Month Notice has passed over 2 months ago. Accordingly, an adjournment was not granted. The hearing proceeded.

### **Issues**

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

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on May 1, 2022, with monthly rent set at \$950.00, payable on the first of the month. The landlord holds a security deposit of \$475.00 for this tenancy.

On January 2, 2023, the landlord served the tenant with a 1 Month Notice to End Tenancy stating the following reason:

*Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;*

The landlord attended the tenant's rental unit and noticed that the tenant had multiple holes in the wall, graffiti on a wall, and damage to the counter tops. The landlord submitted photos of these damaged areas. The landlord is concerned that the tenant takes out their frustration by causing damage to the rental unit. The landlord felt that the damage justified the end of this tenancy.

The tenant confirmed in the hearing that they do have damage inside the rental unit. The tenant testified that the referenced graffiti was the name of their two dogs, and that that this writing was done using a washable substance. The tenant also does not dispute that there are some holes in the walls, which the tenant testified were accidentally caused when the tenant had fallen over while putting on their shoes.

The tenant testified that other than the writing on the wall, the damage to the unit was due to regular wear and tear, and denies intentionally causing any damage to the rental unit. The tenant further testified that they have performed repairs to the referenced damage in this application.

### **Analysis**

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. As the tenant filed their application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving that he has cause to end the tenancy on the grounds provided on the 1 Month Notice.

In this case, the onus is on the landlord to support that the tenant had caused extraordinary damage to the rental unit. In review of the evidence and testimony before me, I am satisfied that the tenant is responsible for some of the damage in the suite. I find that the tenant did not dispute writing the name of their dogs on the wall, and causing the holes in the wall. While I find that the photo submitted by the landlord does show some damage to the countertop, I am not satisfied that the landlord had provided sufficient evidence to show that the damage was due to the intentional actions or neglect of the tenant. Without knowing the exact age of the countertop, or the condition of the countertop at the beginning of the tenancy, I find it difficult to ascertain how much of the damage was due to the tenant's actions rather than regular wear and tear.

In consideration of the damage to the walls, I find that the damage shown in the pictures appear to be more cosmetic than extraordinary. I note that although the tenant is

responsible for maintaining the rental unit during the tenancy, and returning the rental unit to the landlord at the end of the tenancy in reasonably clean and undamaged condition, the basis of the 1 Month Notice is not simply damage, but extraordinary damage. As noted by the tenant in the hearing, the graffiti could easily be removed. I find the nature of the graffiti is cosmetic in nature as the damage can easily be fixed or addressed, and therefore cannot be considered extraordinary.

Lastly, the landlord submitted photos of holes in the walls, which the tenant admits to creating. I find the tenant's explanation to be a credible one. The photo shows holes in the wall located by the entrance where the tenant would normally put on and take off their shoes. In light of the age and condition of the rental unit, I find it possible that the tenant had accidentally caused these holes during their tenancy. Regardless of how these holes were created, I find this damage to be more cosmetic in nature than extraordinary.

I find that the landlord has not met the burden of proof to support that this tenancy should end on the grounds provided on the 1 Month Notice. Accordingly, I allow the tenant's application to cancel the 1 Month Notice dated January 2, 2023. The tenancy is to continue until ended in accordance with the *Act*.

I note that this finding does not relieve the tenant's obligations to maintain the rental unit in accordance with section 32 of the *Act*, or their obligation to leave the rental unit in undamaged condition except for reasonable wear and tear in accordance with section 37(2)(a) of the *Act*.

The tenant also applied for an order for the landlord to comply with the *Act*. I am not satisfied, based on the evidence provided, that the landlord has contravened the *Act*. Accordingly, I dismiss this portion of this portion of the tenant's application without leave to reapply.

### **Conclusion**

I allow the tenant's application to cancel the 1 Month Notice. The landlord's 1 Month Notice to End the Tenancy dated January 2, 2023 is cancelled, and is of no continuing force or effect. This tenancy is to continue until ended in accordance with the *Act*.

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: May 05, 2023