



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding T&M VENTURES LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OPC, MNSD, FF, MT, DRI, CNC

### Introduction

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

- an Order of Possession for cause, pursuant to section 55;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's application pursuant to the *Act* for:

- more time to make an application to cancel the landlords' 1 Month Notice to End Tenancy for Cause, dated October 3, 2014 ("1 Month Notice"), pursuant to section 66;
- cancellation of the landlord's 1 Month Notice, pursuant to section 47; and
- an order regarding a disputed additional rent increase, pursuant to section 43.

The tenant and his agent, PB (collectively "tenant") and the landlord DEC ("landlord") attended the hearing and were each given an opportunity to present their sworn testimony, to make submissions and to call witnesses.

The landlord confirmed that he is the manager of the rental building. He confirmed that he had authority to represent the landlord company, TMVL, named in this application, as agent at this hearing (collectively "landlords"). The tenant confirmed that his agent PB had authority to speak on his behalf at this hearing.

The landlord testified that he served the tenant with the 1 Month Notice on October 3, 2014 by posting it to the tenant's rental unit door. The tenant confirmed that he

received the 1 Month Notice on October 4, 2014. In accordance with section 88 of the *Act*, I find that that the tenant was served with the 1 Month Notice on October 4, 2014.

The landlord testified that the tenant was served with the landlords' application for dispute resolution hearing package ("Landlords' Application") on November 13, 2014, by way of registered mail and by posting to his rental unit door. The tenant confirmed receipt of the Landlords' Application. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was duly served with the Landlords' Application, as declared by the parties.

The tenant testified that he personally served the landlord with the tenant's application for dispute resolution hearing package ("Tenant's Application") on October 16, 2014. The landlord confirmed receipt of the Tenant's Application. In accordance with section 89 of the *Act*, I find that the landlords were duly served with the Tenant's Application, as declared by the parties.

#### Issues to be Decided

Is the tenant permitted more time to make his application to cancel the landlords' 1 Month Notice?

Should the landlords' 1 Month Notice be cancelled? If not, are the landlords entitled to an Order of Possession?

Is the tenant entitled to an order regarding a disputed additional rent increase?

Are the landlords entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Are the landlords entitled to recover the filing fee for this application from the tenant?

#### Preliminary Matters

During the hearing, the tenant requested an amendment to his application, in order to add the relief to ask for more time to make an application to cancel the landlord's 1 Month Notice. The landlords opposed the tenant's amendment request. The tenant stated that he did not realize that he was out of time to make his application to cancel the 1 Month Notice within 10 days as per section 47(4) of the *Act*. The tenant stated that the 1 Month Notice was posted to his rental unit door on October 3 and section 90 indicates that it is deemed received three days later on October 6, in which case the

tenant made his application to cancel the 1 Month Notice within 10 days by October 16. However, given that the tenant admitted service on October 4, his application would have to be made by October 14. Therefore, the tenant was unaware that he was required to make an application for more time to cancel the 1 Month Notice, because he assumed he was within the 10 day time limit.

The tenant indicated that he contacted the Residential Tenancy Branch ("RTB") and was told that he had until October 16, 2014 to make his application, and that he made his application on that date. The tenant also cited mental health concerns, for which he provided a doctor's note, in the review hearing below, for his inability to attend the previous hearing. The tenant stated that he had to find an advocate in order to assist him at this hearing. All of these reasons are why the tenant says he should be allowed to amend his application to add more time and that he should be given more time to make his application to cancel the 1 Month Notice.

As per section 64(3)(c) of the *Act*, I have the authority to make an amendment to the tenant's application to add the tenant's requested relief for more time to cancel the 1 Month Notice. The landlords have opposed this amendment. However, I am prepared to grant the tenant's requested amendment to add the relief to add more time to cancel the 1 Month Notice. I make this amendment due to the tenant's health concerns, his delay in finding an advocate to assist him in these proceedings, and the fact that he made his application by October 16, which is the date that he says he was told by the RTB to apply.

### Background and Evidence

This hearing was originally scheduled to occur on November 26, 2014 at 1:00 p.m. The decision of another arbitrator, dated November 26, 2014, indicated that the tenant's application to dispute the landlords' additional rent increase and cancel the 1 Month Notice for cause, was dismissed without leave to reapply. The landlords' application for an order of possession for cause and to recover the filing fee was successful at this previous hearing. An order of possession was issued for November 30, 2014 at 1:00 p.m. The tenant applied for a review and was granted a new hearing, by order of another arbitrator on December 10, 2014. This proceeding is the new hearing for both parties' applications.

The landlord testified that this periodic tenancy began on August 1, 2013. Under the tenancy agreement, monthly rent in the amount of \$740.00 is payable on the first day of each month. A security deposit of \$740.00 was paid by the tenant on July 4, 2013,

which the landlord continues to retain. The tenant continues to reside in the rental unit. A written tenancy agreement was provided with the Landlords' Application.

The landlords issued the 1 Month Notice, with an effective move-out date of October 31, 2014, for the following reasons:

- the tenant has caused extraordinary damage to the unit/site or property/park;
- the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
- the tenant or a person permitted on the property by the tenant, significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord acknowledged that he had no evidence that the tenant caused any extraordinary damage to the rental unit or that the tenant put the landlord's property at significant risk. The landlord stated that the tenant caused water damage to another occupant's rental unit on October 3, 2014. The landlord stated that the tenant flooded the rental unit below him when he fell asleep washing dishes and a plastic bag had clogged his sewer drain. The landlord called the police, who stated intent could not be proven. The landlord was unable to ascertain the extent of the damage or take photographs in the tenant's rental unit because he says that the police advised him to stay away from the tenant. The landlord provided a letter from the affected occupant, which states that the tenant plugged his sink and caused the flooding in the hallways and in her rental unit. The occupant did not testify at this hearing to confirm her written complaint or to provide evidence with respect to how she concluded that it was the tenant who caused this water damage.

The landlord stated that the tenant or an occupant permitted on the property by the tenant, significantly interfered with or unreasonably disturbed another occupant or the landlord. The landlord stated that there were no complaints against the tenant between July and September 2014. He said that this was a calm and peaceful period at the rental building. The landlord indicated that the complaints against the tenant began in October and continued to November 2014.

The landlord provided 5 complaint letters from other occupants in the rental building. All of the letters are dated in early November 2014. The landlord provided these occupants with a template letter, and each occupant completed details, signed and dated the letter. The complaints discuss the tenant's loud music, yelling, using foul language, as well as the tenant setting off fire alarms during the night. Three letters do not state any time periods for their complaints, regarding the tenant. The remaining two letters discuss fire

alarm noises caused by the tenant in July 2014 and loud music noises in October 2014. The letters also state that the tenant caused water flooding in the rental building, the tenant asked to see another occupant's baby late at night, and the police attended the rental building.

The landlord stated that the tenant has attempted to socialize with the landlord and knocks on his door, asking him to go out, spend time together and share news. The landlord says this is a disturbance and it is against his policy to socialize with the tenant. He also stated that on October 2, 2014, the tenant falsely reported a domestic disturbance to the police in the landlord's rental unit and that the police attended to search the landlord's unit. The landlord indicated that the tenant falsely reported a gas leak on October 9, 2014, after he issued the 1 Month Notice.

The tenant testified that when he was advised about loud music complaints against him, he got rid of the stereo in his rental unit in July 2014. The tenant also stated that he was advised to pull the fire alarm in March 2014, not July 2014, after smelling smoke and calling the fire department first. The tenant indicated that he received a letter, dated March 28, 2014, from the fire department stating that the fire alarm system in the rental building requires servicing. The tenant did not provide a copy of this letter with his application. The landlord testified that the fire alarm incidents occurred in July 2014, that the fire alarm undergoes an automatic reset after it is activated, and that the rental building adheres to proper fire standards and has annual inspections done in April of each year. The tenant also indicated that the police attended the rental building looking for his brother, which he says he had no control over.

### Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the both parties' claims and my findings around each are set out below.

#### 1 Month Notice

As per section 66 of the *Act*, I grant the tenant more time to make his application to cancel the 1 Month Notice. The tenant was only two days past the 10 day deadline to dispute the 1 Month Notice, as the tenant applied on October 16 rather than October 14. I also find that given the tenant's health concerns, his delay in finding an advocate to assist with his application and to review the landlord's application, and his understanding that he was required to apply by October 16 as per his conversation with

the RTB, he has demonstrated exceptional circumstances in requiring this additional time. I also find that as per section 66(3) of the *Act*, the tenant did not apply past the effective date on the 1 Month Notice, which is October 31, 2014.

As I have granted the tenant more time to cancel the 1 Month Notice, the burden shifts to the landlords to show, on a balance of probabilities, the grounds on which the 1 Month Notice is based as of the date of that Notice.

The landlord indicated that the tenant caused water damage to another occupant's rental unit but he had no photographs, repair estimates or paid invoices to demonstrate this damage. Accordingly, I find that the landlords have not met their burden to show that the tenant caused any extraordinary damage to the rental unit or that the tenant or a person permitted on the property by the tenant, put the landlords' property at significant risk.

The landlord stated that there were loud music complaints against the tenant during late night hours on October 2, 2014, and he served the 1 Month Notice upon the tenant on October 3, 2014. The tenant indicated that he was not aware of any complaints against him from October 2014 and that he did not have his stereo as of July 2014, so he could not be accused of playing loud music.

The landlord said that he spoke to the tenant on numerous prior occasions regarding complaints and issued a previous 1 Month Notice. However, the landlord himself stated that there were no complaints against the tenant from July to September 2014. New complaints arose on October 2, 2014 but the tenant was not notified of these complaints, he was simply issued a 1 Month Notice the next day, on October 3, 2014.

There is evidence that the complaints about loud music in July 2014 were resolved by the tenant giving away his stereo. There is evidence that the complaints about the tenant pulling the fire alarm and disturbing other occupants were explained by the tenant stating that he smelled smoke and was told to pull the fire alarm by the fire department. The landlord did not provide documentary evidence that the tenant falsely activated the fire alarm, falsely reported a gas leak or falsely reported a domestic disturbance in the landlord's rental unit. The landlord did not produce any witnesses, such as the other occupants who wrote complaint letters, to testify at this hearing to verify their statements or to provide other testimonial evidence.

In any event, I do not find the above instances to be a significant interference or an unreasonable disturbance. I also do not find the police attending the rental building on

one occasion and the tenant attempting to socialize with the landlord, to be a significant interference or an unreasonable disturbance.

I find that the landlords have not met their burden of proof to show that the tenant or an occupant permitted on the property by the tenant, significantly interfered with or unreasonably disturbed another occupant or the landlords.

Accordingly, the tenant's application to cancel the landlord's 1 Month Notice, is allowed. The landlords' 1 Month Notice, dated October 3, 2014, is cancelled and of no force or effect. I dismiss the landlords' application for an order of possession for cause. This tenancy continues until it is ended in accordance with the *Act*.

#### Disputed Rent Increase

The tenant disputes the landlords' Notice of Rent Increase ("NRI"), which he says raised his rent by \$20.00 each month, as of November 1, 2014. Neither party provided a copy of the NRI with their applications, so I requested that the landlord provide me with a faxed copy after the hearing. I received the landlords' NRI and reviewed it before writing this decision.

The landlord stated that he served the tenant with the NRI, which is dated July 28, 2014, on the same date. The landlord testified that he served the NRI by placing it under the tenant's rental unit door. The tenant testified that he received the NRI in August or September 2014. The NRI indicates that the previous rent of \$740.00 would be increased by \$20.00, which totals \$760.00 for rent each month, effective as of November 1, 2014. The tenant stated that he did not pay the new amount of rent as of November 1, 2014, as he disputed this amount, so he continued paying \$740.00. The landlord confirmed that he had not made any applications to recover this unpaid rent or to obtain an additional rent increase. The landlord stated that the tenant did not dispute the rent increase within 90 days, so the tenant was not entitled to dispute the amount at this hearing.

Section 88 of the *Act* requires the NRI to be served as per one of the methods outlined in that section, which does not include placing the NRI under the tenant's rental unit door. However, given that the tenant admitted service, I find that he did receive the NRI from the landlord.

Section 42 of the *Act* stipulates how a rent increase may be made for a rental unit. The *Residential Tenancy Regulation* stipulates the percentage amount of the rent increase that can be made each year. For 2014, the maximum allowable rent increase was

2.2%. As the landlords attempted to raise the rent as of November 1, 2014, the percentage rates for 2014 apply. On a rental amount of \$740.00, the maximum amount of rent that can be increased each month is \$16.28. By contrast, the landlord attempted to raise the tenant's rent by \$20.00 each month in his NRI.

Accordingly, the landlords' attempted rent increase is illegal, as he did not make an application under section 43(3) of the *Act*, for an additional rent increase above the allowable amount. The tenant is not limited by a 90-day rule to dispute the NRI, as this is not a provision of the *Act*. The tenant has properly disputed the landlords' additional rent increase.

The landlords' Notice of Rent Increase, dated July 28, 2014, is cancelled and of no force or effect. I order that the tenant's monthly rent at this rental unit remains at \$740.00 throughout the remainder of this tenancy, until it is legally changed in accordance with the *Act*. As the tenant has continued to pay this \$740.00 monthly rent amount since November 1, 2014, he has not overpaid for any rental amounts.

#### Security Deposit

The landlord stated that he wished to retain the tenant's security deposit in order to pay for the water damage to another occupant's rental unit, which he says was caused by the tenant.

The security deposit is to be used at the end of a tenancy in accordance with section 38 of the *Act*. As the tenancy is continuing and the landlords are attempting to use the security deposit outside of the provisions of section 38 of the *Act*, I dismiss the landlords' application to retain the tenant's security deposit.

#### Conclusion

The tenant is permitted more time to make an application to cancel the landlords' 1 Month Notice.

The tenant's application to cancel the landlords' 1 Month Notice is allowed. I dismiss the landlords' application for an order of possession for cause. The landlords' 1 Month Notice, dated October 3, 2014, is cancelled and of no force or effect. This tenancy continues until it is ended in accordance with the *Act*.

The landlords' application to retain the tenant's security deposit is dismissed.



The landlords' Notice of Rent Increase, dated July 28, 2014, is cancelled and of no force or effect. The tenant's monthly rent at this rental unit remains at \$740.00 throughout the remainder of this tenancy, until it is legally changed in accordance with the *Act*.

As the landlords were unsuccessful in their application, they are not entitled to recover the filing fee of \$50.00 from the tenant.

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: January 23, 2015

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Residential Tenancy Branch

