



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened to hear the Tenant's Application for Dispute Resolution filed on August 7, 2015. The Tenant has sought to cancel a 1 Month Notice to end tenancy for cause.

The hearing was conducted via teleconference and was attended by the Landlord and the Tenant's legal advocate, hereinafter referred to as the Advocate.

The Advocate advised that the Tenant called her just prior to the hearing to state she was unable to get a ride to her office so she could not attend this hearing. She indicated that the Tenant was blind (visually impaired) and could not call into the hearing as she could not see the instructions and telephone number listed on the Notice of Hearing document. Upon further clarification the Advocate indicated that the Tenant's Social Worker had programed the Advocate's telephone number into the Tenant's speed dial which enabled the Tenant to contact the Advocate.

At the request of the Advocate I called the Tenant and she was added to the teleconference hearing.

I explained how the hearing would proceed and the expectations for conduct during the hearing, in accordance with the Rules of Procedure. Each person was provided an opportunity to ask questions about the process however, each declined and acknowledged that they understood how the conference would proceed. The Landlord and Tenant provided affirmed testimony.

The Landlord testified that their documentary evidence was served upon the Tenant via registered mail on October 5, 2015. The Landlord submitted that she had not been informed that the Tenant was working with a legal advocate and she had not been served evidence from the Tenant or the Advocate.

The Tenant acknowledged receipt of the Landlord's evidence and stated that she had not had all of the evidence read to her. Upon further clarification the Tenant submitted that she did not like what was written in the Landlord's evidence and chose not to have all of it read to her.

The Advocate asserted that she had not received copies of the Landlord's evidence. She submitted that she first met with the Tenant on August 7, 2015 when the Tenant was brought to her office with the Tenant's Social Worker. She last spoke with the Tenant on September 30, 2015 at which time the Tenant advised that she had refused further assistance from her Social Worker. The Advocate asserted that the Tenant never informed her that she had received documentary evidence.

In consideration of the foregoing, and in keeping with the principals of natural justice, the Landlord was given the opportunity to read the relevant sections of her documents into evidence. Each party was given a full and fair opportunity to present their evidence orally and to cross examine each other.

#### Issue(s) to be Decided

1. Should the 1 Month Notice to end tenancy issued July 31, 2015 be cancelled or upheld?
2. If upheld, did the Landlord make an oral request for an Order of Possession?

#### Background and Evidence

The Landlord submitted evidence that the Tenant entered into a written fixed term tenancy agreement that began on May 1, 2012 and switched to a month to month tenancy after 12 months. Rent began at \$513.99 per month and has subsequently been increased to \$546.86. On April 30, 2012 the Tenant paid \$250.00 as the security deposit. Prior to this tenancy, the Tenant occupied another rental unit in this building at which time the Tenant signed a "Pet Agreement" dated June 26/06. The Pet Agreement provided that the Tenant was allowed to have one cat.

The Landlord testified that she has been resident manager since November 2013 and has had multiple dealings with the Tenant. In consideration of the Tenant's visual impairment, the Landlord asserted that she personally serves and reads every notice or breach letter to the Tenant in the presence of another person.

The Landlord argued that in order to obtain a business license in their municipality their building requires Crime Free Housing certification. When going through the certification process and inspections over a period of several months, concerns were raised regarding the state of the Tenant's rental unit.

The Tenant was found to have unauthorized pets which included two guinea pigs, a rabbit, and two cats not one. There are pet cage shavings, feces and urine all over the rental unit floor and due to the lack of proper ventilation there are concerns for health and safety risks. The rental unit was described as being unorganized, dirty, scattered with personal belongings and furniture.

The Landlord argued there is serious potential for a pest control infestation given the current state of the rental unit. A pest control company has not been brought into assess the rental unit given the Tenant's recent refusal to allow entry.

The Landlord read emails into evidence which were written by the police constable who was conducting the crime free certification inspections and a food service worker who delivered food to the Tenant. Those emails spoke to the condition of the rental unit, as described above. The constable's email also confirmed that he was present when the Landlord had offered the services of her staff to help the Tenant in cleaning and preparing her rental unit.

The Landlord testified that there are recent concerns about the Tenant's ability to care for herself and her pets. A neighbouring tenant's statement was read into evidence which spoke of how the Tenant had approached him on September 5, 2015 and told him that her cat had died. The Tenant had told the neighbour she had placed her cat in the freezer and requested the neighbour to assist her in putting him in the garbage dumpster. The neighbouring tenant assisted in delivering the deceased cat to the SPCA. He later determined that the Tenant had taken in a neighbour's outdoor cat to keep for her own. The neighbour indicated that he determined the aforementioned, after he saw a picture on a missing cat poster. He voiced concerns for the safety of the Tenant's pets and the pets of other tenants given the recent event.

The Landlord voiced her concerns of the Tenant's wellbeing and noted that in recent months the Tenant has answered her door topless. The Landlord is of the opinion that the Tenant needs to be housed in some type of assisted living and not be allowed to have pets as she is unable to properly care for them.

The Landlord submitted that despite her continued efforts to seek mental health or public services to assist the Tenant her requests have been ignored. Her offers to provide the services of her staff have been refused by the Tenant and recently the Tenant has begun to refuse access to her rental unit. The Landlord's crime free housing certification was recently denied and the Tenant was issued a 1 Month Eviction Notice.

The 1 Month Notice was issued July 31, 2015 pursuant to Section 47(1) of the Act listing an effective date of September 1, 2015 for the following reasons:

- Tenant or a person permitted on the property by the tenant has:
  - Seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - Put the Landlord's property at significant risk
- Tenant has engaged in illegal activity that has or is likely to
  - Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
  - Jeopardize a lawful right or interest of another occupant or the landlord

- Tenant has not done required repairs of damage to the unit/site
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

Copies of the following documents were submitted, amongst other things, in the Landlord's documentary evidence: the 1 Month Notice; seven Notices of Entry dated between May 29, 2015 and July 16; three Crime Free Multi-Housing Programs letters addressed to the Tenant; two warning letters dated in July 2015, the tenancy agreement; a signed "Pet Agreement"; a signed Crime Free Housing agreement; and witness emails and letters.

The Tenant testified that she has two guinea pigs, one rabbit and one cat. She argued that she never had two cats. She later submitted that she no longer has a cat as her cat recently passed away.

The Tenant confirmed that she is no longer working with her social worker or anyone else because "things were getting blown out of proportion". She stated she likes to do things on her own. She submitted that she has refused the Landlord's offer of assistance to clean and organize her rental unit because she has been cleaning and vacuuming every day.

The Tenant alleged that the Landlord constantly shows up unannounced. She knocks on her door and always has someone with her. She confirmed the Landlord brings notices and letters and reads them to her.

The Tenant stated she recalled signing a pet agreement but could not recall if that agreement restricted the number of pets she could have. She admitted to becoming upset when the police constable attended to inspect her rental unit and she also confirmed that she has refused the Landlord access to her rental unit.

The Advocate argued that the Pet Agreement was signed in relation to a different tenancy agreement for a different rental unit and could not be considered part of the current tenancy agreement.

The Advocate submitted that the Landlord was not refused their crime free certification based solely on this Tenant's rental unit. She argued that she had knowledge of another tenant whose unit was the subject of the certification refusal.

The Landlord confirmed that there were two units responsible for the certification refusal one of which was this Tenant. She argued that both tenants had been issued a 1 Month Notice and the Advocate had knowledge of that because she represented the other tenant during their hearing to dispute.

The Landlord disputed the Advocate's submission and argued that the Pet Agreement was a separate agreement which pertained to the building and not the rental unit. The

Tenant's previous tenancy was for a unit in the same building; therefore, a new Pet Agreement was not entered into because the initial agreement was grandfathered to the second rental unit.

A discussion ensued whereby the Advocate asked the Landlord the date she would be seeking to evict the Tenant. The Landlord said she is requesting the eviction to be effective November 30, 2015. I explained to the parties that I interpreted the Landlord's response to mean the Landlord was asking for an Order of Possession effective November 30, 2015. Neither party disputed my interpretation.

### Analysis

Upon review of the 1 Month Notice to End Tenancy, I find the Notice to be completed in accordance with the requirements of section 52 of the Act. I further find that the Notice was served upon the Tenant in a manner that complies with section 89 of the Act.

Where a Notice to End Tenancy comes under dispute, the landlord has the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where more than one reason is indicated on the Notice the landlord need only prove one of the reasons. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

In consideration of the circumstances presented to me during the hearing I find the Landlord has satisfied me that the Tenant or a person permitted on the property by the Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord, as indicated on the Notice to End Tenancy. I make this finding in part due to the Tenant's refusal to clean up and/or keep her rental unit in a condition that would meet the requirements of the municipal crime free housing program. I further accept the evidence that the Tenant signed the Crime Free Housing agreement on April 30, 2012, as submitted into evidence.

In addition, there was undeniable evidence that despite the Landlord's compassionate efforts to gain assistance for the Tenant, the Tenant has made a choice to refuse all assistance offered which has placed herself, other tenants and their animals at significant risk.

Notwithstanding the Advocate's arguments that there was one other tenant whose rental unit which played a part in the Landlord not acquiring crime free certification, I conclude that there was sufficient evidence to prove the Tenant's actions, or lack of action, played a significant part in preventing the Landlord from gaining certification.

Therefore, based on the totality of the evidence before me, I uphold the 1 Month Notice to End Tenancy and I dismiss the Tenant's application for cancellation of the Notice.

With respect to the landlord's oral request for an Order of Possession, section 55 of the Act provides that an Order of Possession shall be granted to a landlord where:

- The tenant files to cancel a notice to End Tenancy and the application is dismissed; and,
- The landlord orally requests an Order of Possession during the scheduled hearing.

I find the above criteria have been met and I grant the Landlord's request for an Order of Possession. The Landlord has been issued an Order of Possession effective **November 30, 2015.**

#### Conclusion

The Tenant was not successful with her application and the 1 Month Notice to end tenancy issued July 31, 2015 was upheld. The Landlord made an oral request for an Order of Possession was granted and an Order has been issued to be effective November 30, 2015, upon service to 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: October 21, 2015

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Residential Tenancy Branch

