



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      AS CNC DRI LRE OLC FF

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A participatory hearing, via teleconference, was held on December 5, 2017. The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

1. an order allowing the tenant to assign or sublet because the landlord's permission has been unreasonably withheld pursuant to section 65;
2. cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
3. an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70;
4. an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62; and,
5. an order regarding a disputed additional rent increase pursuant to section 43.

The Tenant attended the hearing and provided affirmed testimony. The Landlord did not attend the hearing.

The Tenant testified that she gave a copy of the Application Package and the Notice of Hearing to the Landlord in person on September 20, 2017. I find the Landlord received the package on this day. The Tenant further stated that on November 17, 2017, and personally served the Landlord with a copy of her evidence package. I find the Landlord received this package on that day.

The Tenant is seeking multiple remedies under multiple sections of the *Act*, a number of which were not sufficiently related to one another. Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues the Tenant applied for, and based on the evidence before me, I find the most pressing issues in this application are related to the possession of the rental unit and the Landlord's compliance with the *Act*. Further, I find there was insufficient time to properly hear all of the issues the Tenant applied for (listed above). As a result, I exercise my discretion

to dismiss, with leave to reapply, all of the grounds on the Tenant's application, except for the following two:

- cancellation of the landlord's 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.

The Tenant was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

#### Issue to be Decided

- Is the Tenant entitled to have the landlord's 1 Month Notice 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 pursuant to section 62?

#### Background and Evidence

As per the Tenancy Agreement, the tenancy began on November 1, 2016, and rent in the amount of \$1,725.00 is due on the first of each month.

The Tenant testified that the Landlord gave her an improper eviction notice that does not comply with the *Act*. She stated that she got a typed letter/email from the Landlord giving her notice that she needs to leave. The Tenant provided a copy of this typed letter (dated September 11, 2017) from the Landlord, and it discussed multiple issues, including ending the tenancy.

The Tenant stated that she never got a proper 1 Month Notice, and only ever got a letter. The Tenant stated that she applied to cancel the Landlord's eviction letter because she wants to stay in the rental unit.

The Tenant also explained that she is tired of the Landlord entering her rental unit while she is not there. She stated that he sometimes comes into her unit and leaves mail without proper notice. The Tenant would like the Landlord to respect her privacy and not enter illegally.

#### Analysis

First, I will address the Tenant's application for an order requiring the Landlord to comply with the *Act*, and her request to have the Landlord stop entering her rental unit while she is not there, and without proper notice. I accept the Tenant's undisputed statements on this matter. I find it important to note the following portion of the *Act*:

**Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
- (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
- (d) the landlord has an order of the director authorizing the entry;
- (e) the tenant has abandoned the rental unit;
- (f) an emergency exists and the entry is necessary to protect life or property.

(2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

I order the Landlord to comply with this section of the *Act*.

Next, I turn to the issue regarding the 1 Month Notice. In the matter before me, the Landlord has the onus of proof to prove that the Notice is valid. I find that the Landlord was properly served with the Notice of Hearing and failed to attend the hearing to prove the allegation within the 1 Month Notice.

Therefore, as the Landlord did not attend the hearing, I cancel the 1 Month Notice (letter) dated September 11, 2017. Furthermore, I find it important to note that Section 52 of the *Act* requires that any notice to end tenancy issued by a landlord must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and **be in the approved form**.

Not only did the Landlord fail to attend the hearing to substantiate his basis to end the tenancy, the eviction letter (dated September 11, 2017) he issued does not meet the form and content requirements of section 52. I find the Landlord's 1 Month Notice (letter) has no force and effect.

I Order the tenancy to continue until ended in accordance with the *Act*.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful in her application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. The Tenant may deduct the amount of \$100.00 from one future rent payment.

Conclusion

The Tenants' application is successful. The notice issued by the Landlord dated September 11, 2017, is cancelled.

The tenancy will continue until 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: December 05, 2017

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Residential Tenancy Branch