



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

This matter dealt with an application by the Tenant to cancel a One Month Notice to End Tenancy for Cause and for an Order that the Landlord comply with the Act.

### Issues(s) to be Decided

1. Does the Landlord have grounds to end the tenancy?

### Background and Evidence

This tenancy started approximately 8 years ago. The Tenant initially signed a tenancy agreement for a one year fixed term which was to continue on a month to month basis thereafter.

The Landlord said that the Tenant was asked to sign a new tenancy agreement but she refused to do so. The Landlord also said that during a routine inspection of the rental unit, he discovered that the Tenant had installed an unauthorized washer and dryer and had removed 2 interior windows. Consequently, the Landlord said he gave the Tenant a written notice on August 20, 2010 that she had to remove the washer and dryer and re-install the windows no later than August 27, 2010. The Landlord said that during a follow up inspection on August 30, 2010, he discovered that the Tenant had not removed the washer and dryer and had not re-installed the windows.

The Landlord said he no longer has a copy of the tenancy agreement that the Tenant signed but claimed that she would have been advised verbally at the beginning of the tenancy that washer and dryer units were not permitted. Consequently, the Landlord said on August 30, 2010 he served the Tenant in person with a One Month Notice to End Tenancy for Cause dated August 30, 2010. The Landlord did not provide a copy of the Notice as evidence at the hearing however he claimed that the sole ground checked off on the Notice was "breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The Tenant said that she could not recall if she ever received a copy of the tenancy agreement she signed at the beginning of the tenancy. In any event, the Tenant said she could not recall being advised that she was not permitted to install a washer and

dryer and claimed that she was always under the impression that she could install one given that each suite in the rental property had hook ups professionally installed and that other suites including that of the resident manager had a washer and dryer installed. The Tenant admitted that she removed some interior windows to allow air to circulate in the bedrooms during the summer but said she would re-install them within 30 days.

The Tenant denied receiving a copy of the One Month Notice from the Landlord. The Tenant said she received a letter from the Landlord dated August 30, 2010 that advised her she would have to move out by October 1<sup>st</sup> because she failed to sign a new tenancy agreement and for “above-noted infractions” but the other infractions were not specified. The Tenant also said the letter referred to an attached One Month Notice which was not included (which the Landlord denied).

## Analysis

Section 47 of the Act says that a Landlord may end a tenancy by giving a tenant a One Month Notice which must comply with s. 52 of the Act. Section 52 of the Act says (in part) that a Notice to End Tenancy when given by a Landlord must be in the approved form. The Tenant denied receiving a copy of a One Month Notice to End Tenancy for Cause dated August 30, 2010 from the Landlord and the Landlord did not provide a copy of the Notice as evidence at the hearing. Consequently, I find that there is insufficient evidence to conclude that the Tenant was served with a Notice and that if she was that it complied with s. 52 of the Act. As a result, I find that there is insufficient evidence that the Landlord served the Tenant with a valid and enforceable Notice.

Even if the Landlord had served the Tenant with a valid Notice on the ground he stated, I would still grant the Tenant’s application to cancel that Notice as I find that the Landlord has provided no evidence to support it. In this matter, the Landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. The Landlord provided no evidence that the Tenant’s original tenancy agreement required her to sign a new tenancy agreement at the expiry of the fixed term. The Landlord also provided no evidence that the Parties’ tenancy agreement contained a **material term** (or any term) prohibiting the Tenant from installing a washer and dryer in the suite or prohibiting the Tenant from temporarily removing interior windows.

Although the Landlord argued that the Tenant’s washer and dryer posed a potential risk of damage to other suites in the rental property if it leaked, I find that this is not only speculative and but also contradictory to the Landlord’s practice of allowing his own property manager to have them in his suite. For all of these reasons, the Tenant’s



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application is granted. The One Month Notice to End Tenancy for Cause dated August 30, 2010 is cancelled and the tenancy will continue.

As the Tenant has been successful on her application, I find that she is entitled pursuant to s. 72 of the Act to recover from the Landlord the \$50.00 filing fee she paid for this proceeding and I order that she may deduct that amount from her next rent payment when it is due and payable.

## Conclusion

The Tenant's application is granted. 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 07, 2010.

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Dispute Resolution Officer