



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, FF

### Introduction

This hearing dealt with the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking to cancel four 1 Month Notices to End Tenancy for Cause (the "Notice") issued by the landlord.

The parties appeared and the hearing process was explained. Thereafter the parties gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and 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(s) to be Decided

Should the landlord's four 1 Month Notices to End Tenancy for Cause issued to the tenant be cancelled?

### Background and Evidence

This one year, fixed term tenancy started on August 1, 2011, monthly rent is \$1100.00 and the tenant paid a security deposit of \$550.00 on or about July 17, 2011.

The rental unit is the upper level of a home, and the basement suite is occupied by at least four other people.

The evidence shows that the tenant was issued four 1 Month Notices to End Tenancy for Cause.

The first Notice, dated February 16, 2012, was delivered to the tenant's wife on that date, listing an effective end of tenancy on March 16, 2012.

The causes listed on the February 16 Notice, alleged that the tenant had allowed an unreasonable number of occupants in the rental unit, had engaged in illegal activity that caused damage to the rental unit, had not done required repairs to the rental unit, had breached a material term of the tenancy agreement which was not corrected within a

reasonable time after written notice to do so and assigned or sublet the rental unit without written permission from the landlord.

The second Notice, dated February 18, 2012, delivered to the tenant, alleged that the tenant breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

The third Notice, also dated February 18, 2012, delivered to the tenant, alleged that the tenant had not done required repairs to the rental unit.

The fourth Notice, also dated February 18, 2012, delivered to the tenant, alleged that the tenant had not done required repairs to the rental unit and had breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so.

Pursuant to the Residential Tenancy Branch rules of procedure, the landlord's agent proceeded first in the hearing and testified in support of issuing the tenant four 1 Month Notices to End Tenancy for Cause.

The landlord's agent stated that the actual landlord is her mother; however, the agent said that she acts on behalf of her mother for the purposes of this tenancy. When explaining the multiple Notices, the landlord's agent stated that the first Notice of February 16, listed her mother, in the landlord information portion of the Notice.

Directly after issuing this first Notice, the agent stated she was informed by the property manager that the Notice should be issued in her, the agent's, name; therefore the agent thought she should issue additional Notices.

The landlord's agent did not make clear why she issued two Notices listing one separate cause, and then a third Notice combining those two causes.

The landlord's agent stated that she misunderstood all the causes and confirmed that the tenant had not engaged in illegal activity or had not sublet the rental unit.

The landlord's agent stated that despite the multiple causes listed on the multiple Notices, the main issue for the landlord was the allegation of the breach of a material term by the tenant. The breach as alleged was that the tenant failed to mow the lawn as required by the tenancy agreement.

The landlord submitted a copy of a tenancy agreement, signed by the tenant on July 17, 2011, and by the landlord on July 20, 2011. This copy, under "Additional Terms," contained handwritten terms on the last page of the document, directly above the signature and date line, which stated:

*"a. the tenant (sic) responsible to cut the grass weekly in summer and twice a month in winter. Landlord will provide a lawnmower."*

The landlord's agent stated that the tenant has violated that term by not maintaining or mowing the lawn and failed to respond to the written notices.

The landlord's agent also stated that as to the unreasonable number of occupants, even though the tenancy agreement listed the tenant as the sole tenant, the tenancy was intended for the tenant, his wife and two adult children. The agent stated another adult occupant is living in the rental unit.

The landlord's agent also submitted that the tenant broke a light fixture shortly after moving in and has not fixed it.

In response, the tenant stated that he is not responsible for mowing the lawn under the tenancy agreement and therefore has not breached a material term. In support of his position, the tenant submitted his copy of the tenancy agreement, which showed signatures and dates the same as the landlord's copy, but contained no terms, handwritten or otherwise, under "Additional Terms."

The tenant contended that the landlord added these terms after the tenancy agreement was signed and that he never agreed to the terms.

The tenant submitted that the landlord had provided lawn maintenance until this year, as the rental unit is a shared accommodation, and was unaware as to why the landlord now wanted him to mow the lawn.

The tenant submitted the light fixture has now been replaced and is no longer an issue.

As to the additional occupant, the tenant stated that the fifth person mentioned by the landlord's agent was always intended to be an occupant and as proof, the tenant stated that the fifth person was present when the tenancy agreement was signed and the hydro bill submitted to the tenant by the landlord for repayment mentions five persons living in the rental unit.

### Analysis

Based on the foregoing testimony and evidence, and on a balance of probabilities, I find as follows:

Once the tenant made an application to dispute the Notices, four in this case, the burden of proof is on the landlord to prove the causes listed on the Notices. In this case, the landlord's agent admitted that the tenant has not engaged in illegal activity or sublet the rental unit and therefore I no longer considered those causes.

As the matter of the lack of repair, there was no dispute that the light fixture had been replaced. Therefore I no longer considered this cause.

In taking into account the remaining two causes, after considering all of the written and oral evidence submitted at this hearing, I find that the landlord has provided insufficient evidence to show that the tenant has breached a material term of the tenancy agreement which was not corrected within a reasonable time after written notice to do so and allowed an unreasonable number of occupants in the rental unit

In reaching this conclusion I was persuaded by the tenant's copy of the tenancy agreement which showed no requirement for mowing the lawn. As the landlord's copy of the tenancy agreement contained handwritten notations and terms not appearing on the tenant's copy, I could not rely on landlord's copy of the tenancy agreement to determine that this was a term of the tenancy agreement. I find the conflicting and inconsistent documents did not sufficiently meet the landlord's burden of proof necessary in ending this tenancy.

I find on a balance of probabilities that the landlord added these terms after the tenancy had been negotiated and the tenancy agreement signed. I therefore find that the tenant is not responsible for the handwritten terms listed on the landlord's copy of the tenancy agreement and therefore has not breached a material term of the tenancy agreement.

I also accept the tenant's version of events and find that the landlord had agreed to provide for lawn maintenance for the residential property, as the rental unit is a shared accommodation with the basement suite.

As to the landlord's allegation that the tenant has allowed an unreasonable number of occupants, the landlord's agent confirmed that five people attended the rental unit when the tenancy agreement was signed and did not dispute that the hydro bill, shared with the basement suite, contained the reference to five people living in the rental unit.

I also considered that the landlord listed only the tenant, and not his spouse or adult children on the tenancy agreement, which makes it probable that a fifth person also would not be listed.

I also considered the landlord's written submission, which stated that the tenant should pay for 66.67% of the hydro due to six people living in the rental unit, as the fifth person had given birth, due to the four people living in the basement suite paying the remaining percentage.

I therefore accept the tenant's testimony and version of events that the landlord knew and agreed that the fifth person would be an additional occupant.

Therefore I find that the tenant has not allowed an unreasonable amount of occupants into the rental unit.

I therefore find that the landlord has submitted insufficient proof to establish the causes listed on the four Notices.

### Conclusion

As a result, I find the landlord's four 1 Month Notices to End Tenancy for Cause is not valid and not supported by the evidence, and therefore has no force and effect. I **order that the four Notices, one dated February 16 and the other three dated February 18, 2012, are cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.**

Having found that the tenant's application had merit, I award the tenant recovery of the filing fee. The tenant may deduct the amount of \$50.00 from his next monthly rent payment or a future month's rent payment in satisfaction of his monetary award of \$50.00.

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: March 08, 2012.

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Residential Tenancy Branch