



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC FF

### Introduction

This hearing was convened as a result of the tenant's application for dispute resolution under the *Residential Tenancy Act* (the "Act") to cancel a 1 Month Notice to End Tenancy for Cause, and to recover the filing fee.

The tenant and the agents for the landlord attended the hearing. Both parties gave affirmed testimony, were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

### Preliminary and Procedural Matter

At the start of the hearing, the tenant stated that he received the landlord's evidence package, but felt it was not served in accordance with the rules pertaining to service of evidence. I advised the tenant that he applied to dispute the 1 Month Notice to End Tenancy for Cause (the "Notice"), however, did not provide a copy of the second page of the two page Notice. Both parties were advised that the landlord provided both pages of the Notice, and without considering the landlord's evidence, I would be inclined to dismiss the tenant's application.

The tenant stated that he had the opportunity to review the landlord's evidence package and was prepared to proceed with consideration of evidence packages from both parties. As a result, I continued with the hearing having accepted that both parties received and had the opportunity to review the evidence package of the other party.

### Issue(s) to be Decided

- Should the 1 Month Notice to End Tenancy for Cause be cancelled?
- Should the tenant recover the filing fee?

### Background and Evidence

The tenant testified that on June 7, 2012, he received a 1 Month Notice to End Tenancy for Cause (the "Notice") for breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. On June 14, 2012, the tenant applied to dispute the Notice in accordance with the *Act*.

The agents for the landlord were asked about the breach of the material term of the tenancy agreement that led to the Notice. An agent for the landlord stated that parking was the material term of the tenancy agreement that the tenant was not complying with. The tenant stated that he currently occupies 4 parking stalls while the landlord stated he is only entitled to 1 parking stall.

The agents for the landlord made reference to a written tenancy agreement which is apparently dated January 1, 1996. The written tenancy agreement was not submitted as evidence by either party. The tenant disputed the written tenancy agreement by stating he didn't have a copy of the tenancy agreement.

The agents for the landlord were asked to read the wording specifically related to parking from the written tenancy agreement. An agent for the landlord stated that the only reference to parking was, "\$0.00 for parking". The agent confirmed during the hearing that the tenancy agreement did not indicate restrictions on parking, or the maximum parking stalls allowed for each tenant.

### Analysis

Residential Tenancy Policy Guideline #8 states that a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. The onus to prove the breach of the material term is on the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

During the hearing, an agent for the landlord testified that parking restrictions were not included in the original tenancy agreement. As a result, the landlord has provided no supporting evidence that parking is a material term. Therefore, I **cancel** the 1 Month Notice to End Tenancy for Cause and find the tenancy will continue until ended in accordance with the *Act*.

As the tenant was successful in their application, I **grant** the tenant's claim of **\$50.00** to recover the cost of the filing fee, pursuant to section 67 of the *Act*. The tenant may deduct \$50.00 from August 2012 rent.

Conclusion

I **cancel** the 1 Month Notice to End Tenancy for Cause. The tenancy continues until ended in accordance with the *Act*.

I **grant** the tenant's claim to recover the cost of the filing fee in the amount of **\$50.00**, which may be deducted from August 2012 rent.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: July 06, 2012

---

Residential Tenancy Branch