



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute codes**

MT, CNC

### **Introduction**

The tenant applied for more time to make this application. As the tenant filed the application within the prescribed time for such an application, this portion of the application is not necessary and is dismissed.

This hearing was convened in response to an application filed on September 27, 2012 by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End) dated September 25, 2012 with the reasons as:

*Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

The landlord alleges that the tenant is parking a vehicle contrary to the terms of the tenancy agreement, and that the applicable terms are 'material terms' of the agreement.

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via prior submissions and their testimony. Both parties acknowledged receiving the evidence of the other.

For this type of application, the onus is on the landlord to prove the Notice to End was issued for valid and sufficient reasons as identified in the Notice to End, and that the reasons must constitute sufficient cause for the Notice to be valid.

At the outset of the hearing the landlord verbally requested an Order of Possession should I uphold the landlord's Notice to End.

**Issue(s) to be decided**

Is there *sufficient* cause to end the tenancy for the reasons advanced by the landlord?  
and

Is the landlord entitled to an Order of Possession?

**Background and evidence**

The relevant evidence in this matter is as follows. This tenancy began 13 years ago. There is a written tenancy agreement governing this tenancy. I have benefit of a legible tenancy agreement, signed September 1999. The landlord alleges that the tenant is storing one of their three vehicles (a boat and motor) on the residential property, referred to as common property, and that any one (1) vehicle of this tenancy is to be confined to the carport of the rental unit. The landlord claims that the conditions are a breach of the term governing Sec. 23 - *Storage* in the tenancy agreement which specifically states: *Only vehicles listed in the tenancy application (and no other vehicles) may be parked not stored on the residential property.*

The landlord and tenant provided evidence that the boat has been stored in the current area of the residential property with the landlord's knowledge since at least March 2012 without obtaining approval from the landlord. The landlord allowed the boat to remain in its place pending the potential sale of the boat. On August 13, 2012 the landlord gave the tenant a letter advising the boat be removed within 7 days. On September 17, 2012 the landlord gave the tenant another letter advising the boat be removed within 7 days and that failure to remove the boat could result in the tenancy ending.

The evidence also shows that the tenant has 2 additional vehicles parked or stored on the residential property which the landlord has not or does not consider a breach of the tenancy agreement, and are not the subject of any formal or informal dispute.

The evidence is also that the parties agree that for a period nearer to the outset of the tenancy - for a period up to 9 years - the tenant stored and parked 2 motor vehicles on

the residential property, which were never and have never been the subject of an objection by the landlord or a dispute between the parties.

### **Analysis**

The testimony of the tenant and the landlord, clearly, is that the issue of the boat on the residential property is a contentious and acrimonious matter.

I find that the Tenancy Agreement of 1999 signed by both parties, is the document which both parties have agreed, by their signatures, will govern the use of stored vehicles on the residential property.

A term within a contract (Tenancy Agreement) is not automatically a material term. In other words, not all terms within a Tenancy Agreement that are breached are cause to end the tenancy. It must be noted that Residential Tenancy Policy defines a material term as *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*. It falls to the person or party relying on the term, in this case the landlord, to present evidence and argument supporting the proposition that the referenced term is a material term, and that the onus of establishing that the tenancy should end for breaching the material term rests on that party – in this case the landlord.

I find that the landlord's tolerance of a second vehicle on the residential property for 9 years, and the landlord's current tolerance of a second vehicle on the residential property (tenant's motorcycle), and the landlord's tolerance of the boat on the residential property for almost 5 ½ months before giving the tenant written notice to remove the boat, are all grossly inconsistent with a term of the Agreement *that the parties both agreed as so important that the most trivial breach of the term gives the other party the right to end the agreement* – thus ending the tenancy.

I find that the landlord may well have good reason to ask the tenant to remove the boat; but, the landlord has not met their onus that the tenant has breached a *material term* of

the Tenancy Agreement upon which the landlord can rely to end the tenancy. As a result of all the above, the landlord's 1 Month Notice to End Tenancy for Cause dated September 25, 2012 **is cancelled, set aside, and is of no effect**. The landlord is not entitled to an Order of Possession. It must be noted that the tenant has come perilously close to losing their tenancy and that the landlord is at liberty to issue the tenant a new Notice to End for valid reasons. It is to the parties' mutual advantage to consider the position of the other.

### **Conclusion**

The tenant's application to set aside the landlord's Notice to End **is granted**, and the tenancy continues.

The landlord is at liberty to issue a *valid* Notice to End for *valid* reasons.

**This Decision is final and binding on both parties.**

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 31, 2012

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Residential Tenancy Branch