



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FF

### Introduction

This hearing was convened in response to an application by the Tenant pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order cancelling a notice to end tenancy - Section 47; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

### Preliminary Matter

The Landlord states that the Tenant confirms that the Tenant did not provide its evidence package to the Landlord until May 4, 2016. Rule 3.14 provides that documentary evidence that a party intends to rely on at the hearing must be provided to the other party no less than 14 days before the hearing. As the Tenant did not provide its evidence package within the time allowed and as the provision of late evidence prejudices the Landlord in its ability to respond in a timely manner under the Rules, I decline to consider this evidence package.

### Issue(s) to be Decided

Is the reason on the notice to end tenancy valid?

Is the Tenant entitled to recovery of the filing fee?

### Background and Evidence

The tenancy started on June 2010. The most current written tenancy agreement has a fixed term end date of June 2016. On March 30, 2016 the Landlord served the Tenant with a one month notice to end tenancy for unpaid rent (the "Notice") by giving to the Tenant in person. The reason set out on the Notice is that the the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

The Landlord states that an email dated June 24, 2013 was sent to the Tenant and that this letter was the Tenant's warning letter of the problem. The Landlord confirms that this email contains no mention of a breach of any term of the tenancy agreement, no mention of a material term, and no deadline to correct the problem.

### Analysis

Section 47(1) provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, the tenant has failed to comply with a material term, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Policy Guideline 8 provides as follows:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Without determining whether the storage of articles in the unit is a breach of a material term, as the Landlord did not provide any written notice of a breach of a material term as set out in the Policy, I find, based on the Landlord's own evidence, that the Landlord has failed to substantiate a valid reason to end the tenancy. The Notice is therefore cancelled and the tenancy continues.

As the Tenant has been successful I find that the Tenant is entitled to recovery of the **\$100.00** filing fee. The Tenant may deduct this amount from future rent payable in full satisfaction of this claim.

#### Conclusion

The Notice is cancelled and of no effect.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 11, 2016

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Residential Tenancy Branch