



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute Codes

CNC

### Introduction

This hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

The tenant and landlord's agent (the "landlord") attended the hearing. The landlord confirmed she is an agent of the landlord named in this application, and had authority to speak on her behalf.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence.

Both parties were given full opportunity to provide affirmed testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

### Issue(s) to be Decided

Is the tenant entitled to have the landlord's 1 Month Notice cancelled? If not, is the landlord entitled to an order of possession?

### Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on September 1, 2012 on a month-to-month basis. Rent in the amount of \$850.00 is payable on the first of each month. The tenant remitted a security deposit in the amount of \$425.00 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlord's 1 Month Notice dated October 10, 2016, by way of posting to the rental unit door on October 15, 2016. The grounds to end the tenancy cited in that 1 Month Notice were;

- the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant of the landlord
- the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord
- the tenant or a person permitted on the property by the tenant has put the landlord's property at risk
- the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property
- the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord
- the tenant has engaged in illegal activity that has, or is likely to jeopardize a lawful right or interest of another occupant or the landlord
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so

#### Landlord

The landlord testified that the 1 Month Notice was issued due to the lack of cleanliness in the rental unit which is in contravention of the rules and regulations, in breach of the tenancy agreement.

Following a fire inspection conducted on July 19, 2016, the landlord issued written notice to the tenant to remove things from the stove top, remove excess appliances, shampoo the carpets, clean the toilet and conduct a general clean up no later than August 20, 2016. The landlord did not inspect the rental unit on August 20, 2016 but rather conducted the inspection on October 6, 2016. The landlord testified that the unit remained in an unsanitary, disorderly condition with excess appliances and items stored in an unsafe manner.

In an effort to support her position, the landlord provided a copy of the signed rules and regulations, signed tenancy agreement, signed move-in condition inspection report and written notice. The landlord also provided copies of photographs that depict the condition of the rental unit at the start of tenancy and photographs that show the condition of the rental unit on July 19, 2016 and October 6, 2016.

#### Tenant

The tenant stated upon receipt of the July 20, 2016 letter instructing her to clean up by August 20, 2016, she complied. The tenant acknowledged by the time the landlord visited the rental unit for inspection on October 6, 2016 things had become untidy again. The tenant acknowledged she stored a full size washing machine and two dishwashers in the unit.

## Analysis

Under section 47 of the *Act*, a landlord may end a tenancy for cause for any of the reasons cited in the landlord's 1 Month Notice. The onus is on the landlord to prove the reasons behind the notice. The landlord provided evidence in the form of testimony, a copy of the rules and regulations, signed tenancy agreement, signed move-in condition inspection report, written notice and photographs.

In order to end a tenancy for a breach of a material term, it is a requirement that the tenant first be notified of the breach in writing and be given an opportunity to correct the breach. *Policy Guideline #8, Unconscionable and Material Terms* establish that the notice of breach must include the following:

- *that there is a problem;*
- *that 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...*

Although I am satisfied that the tenant was served written notice, I find the notice does not comply with the above guideline. Specifically the letter does not indicate the issue is a breach of a material term of the tenancy agreement. In addition to this, the landlord failed to conduct an inspection prior to the August 20, 2016 deadline. For these reasons I find the landlord has provided insufficient evidence to establish the tenancy should end on the basis of a breached material term of the tenancy agreement.

That being said, I still find that the condition of the rental unit, which was not permitted, but was allowed by the tenant, still functioned to "seriously jeopardize the health or safety or lawful right of another occupant or the landlord."

Section 32 of the *Act* provides that a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and other residential property to which the tenant has access.

I find the tenant breached section 32 of the *Act* by failing to maintain reasonable health, cleanliness and sanitary standards in the rental unit. The photographs taken in July and October of 2016 show an overly crowded, unsanitary rental unit. Major appliances appear stored in the living room amongst boxes, bags and piles of belongings. The photographs show an electric appliance of some sort on the stove top, carpets containing animal feces and a dirty toilet. For these reasons, I find the 1 Month Notice should not be cancelled and dismiss the tenant's application.

Section 55 of the *Act* establishes that if a tenant makes an application for dispute resolution to dispute a landlord's notice to end tenancy, an order of possession must be granted to the

landlord if, the notice to end tenancy complies in form and content and the tenant's application is dismissed or the landlord's notice is upheld. Section 52 of the *Act* provides that a notice to end tenancy from a landlord must be in writing and must be signed and dated by the landlord, give the address of the rental unit, state the effective date of the notice, state the grounds for ending the tenancy, and be in the approved form.

Based on the landlord's testimony and the notice before me, I find the 1 Month Notice complies in form and content. As the tenant's application has been dismissed I find that the landlord is entitled to a two (2) day order of possession, pursuant to section 55 of the *Act*.

### Conclusion

The tenant's application to cancel the 1 Month Notice is dismissed.

An order of possession is granted to the landlord effective two (2) days after service on the tenant.

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: December 12, 2016

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Residential Tenancy Branch