



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

Tenant's Application: CNC, FF  
Landlord's Application: OPC, ET, FF, O

### **Introduction**

This hearing was scheduled to consider cross-applications pursuant to the *Residential Tenancy Act* (the "Act").

The tenant is seeking to cancel the landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") issued December 19, 2016; and to recover the cost of the filing fee for their application from the landlord (the "Tenant's Application").

The landlord is seeking an order of possession for cause; an order to end the tenancy early and obtain an order of possession; an order for unspecified other relief; and to recover the cost of the filing fee for their application from the tenant (the "Landlord's Application").

The landlord and the tenant appeared at the teleconference hearing. Both the landlord and the tenant gave affirmed testimony. During the hearing the landlord and tenant were given a full opportunity to be heard, to present sworn testimony and make submissions. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

### **Preliminary and Procedural Matters**

The landlord withdrew her application seeking to end the tenancy early and obtain an order of possession. The landlord is proceeding with her application for an order of possession for cause and recovery of the filing fee.

The landlord did not specify any other relief sought in their application. Therefore, I dismiss the landlord's claim for unspecified other relief.

Issue(s) to be Decided

- Should the landlord's One Month Notice be cancelled?
- Is the landlord entitled to an order of possession for cause?
- Is the landlord entitled to recover the cost of the filing fee for their application from the tenant?
- Is the tenant entitled to recover the cost of the filing fee for their application from the landlord?

Background and Evidence

The undisputed evidence established that the parties entered into a one year fixed term tenancy which started on October 1, 2015, ending September 30, 2016, and included an option to renew on a month to month basis. Rent in the amount of \$900.38 is due on the first day of each month. The parties agreed that there had been a rent increase that took effect November 1, 2016. The landlord received a security deposit in the amount of \$425.00 on August 29, 2015.

The landlord testified that a One Month Notice was posted to the tenant's door on December 19, 2016. The tenant acknowledged receiving the Notice on December 19, 2016. The One Month Notice was dated December 19, 2015 with an effective move out date of January 31, 2017.

The landlord's reason for wanting to end the tenancy set out in the One Month Notice is:

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

The details set out in the One Month Notice only refer to the tenant allowing their renter's insurance to lapse. Accordingly, I have only considered the landlord's evidence relevant to this specific reason.

The landlord testified that a material term of the tenancy agreement requires the tenant to maintain renter's insurance. The landlord referred to an addendum which forms part of the tenancy agreement that reads "The tenant will be responsible for their own insurance on their personal possessions". The landlord testified that at the start of the tenancy the landlord insisted that the tenant maintain renter's insurance and that this had to be put into place as part of the tenancy agreement. The landlord testified that the

tenant had renter's insurance from October 1, 2015 to October 1, 2016 and has since let his policy lapse.

The landlord testified that she did not inform the tenant in writing that the lack of renter's insurance is a problem and which the landlord believes is a breach of material term of the tenancy agreement. The landlord also acknowledged that the tenant was not given any deadlines within which to correct the problem before the tenancy would end.

The tenant acknowledged not having any renter's insurance after he let his policy lapse. The tenant's position is that the wording in the addendum does not create an obligation on the part of the tenant to maintain renter's insurance. The tenant argued that he is therefore not breaching a material term of his tenancy agreement.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Section 47(1) (h) allows a landlord to end a tenancy by giving notice to end the tenancy if the tenant:

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Policy Guideline #8 explains the requirements to end a tenancy agreement for breach of a material term. To end a tenancy agreement for breach of a material term, the party alleging a breach 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.

I find that that there is insufficient evidence that the landlord gave the tenant notice of the problem with an opportunity to correct the situation. In making this finding I have taken into consideration the fact that the landlord has acknowledged not having done so. Therefore, I find that the landlord is not entitled to an order of possession for cause

on the basis of the One Month Notice. Accordingly, the landlord's application is dismissed.

As the landlord's application is not successful, I find that the landlord is not entitled to recovery of the filing fee for their application from the tenant.

Based upon the foregoing, I find that the tenant is entitled to cancellation of the One Month Notice and the tenancy will continue until it ends in accordance with the *Act*.

As the tenant's application is successful, the tenant is awarded recovery of the filing fee and is authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this award.

### Conclusion

The landlord's application is dismissed.

I cancel the One Month Notice dated December 19, 2016 and the tenancy will continue until such time as it ends in accordance with the *Act*.

The tenant is awarded the \$100.00 filing fee and is authorized to deduct \$100.00 from a subsequent month's rent in satisfaction of this award.

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: February 07, 2017

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Residential Tenancy Branch