



# 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 attended the hearing. The tenant stated that her advocate was also attending the hearing. In the absence of the tenant's advocate, the tenant was given an opportunity to exit the teleconference hearing and contact her advocate to ensure he had the necessary information to join the teleconference. Within a few minutes the tenant returned to the teleconference and informed the parties that although her advocate had the necessary details to call into the teleconference he would not be joining the hearing. The tenant confirmed she was prepared to resume the hearing in the absence of her advocate.

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 testimony of the parties, the tenancy began on August 1, 2004 on a fixed term until July 31, 2005 at which time the tenancy continued on a month-to-month basis. Rent is payable on the first of each month. The tenant remitted a security deposit in the amount of \$297.50 at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged personal receipt of the landlord's 1 Month Notice dated November 29, 2017. 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 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

#### Landlord

The landlord testified that the 1 Month Notice was issued primarily due to the hoarding of items in the rental unit.

Following a report from a concerned neighbour in August of 2016, the landlord issued a notice of inspection to the tenant. The landlord inspected the unit on September 21, 2016 and found it to be cluttered with excess items and little room to walk.

The tenant was instructed to remove the clutter and issued a notice of inspection dated October 22, 2016. On October 25, 2016 the landlord inspected the rental unit at which time he found the unit remained cluttered. The landlord took photographs this date and submitted them as part of his documentary evidence.

Following the October 25, 2016 inspection the landlord called the local fire department and health authority for assistance. On November 1, 2016 the landlord issued a notice of inspection to the tenant. On November 3, 2016 the landlord, a member of the local fire department and a member of the health authority inspected the unit and found the unit remained cluttered, posing a fire and health hazard.

On November 14, 2016 the landlord issued written notice to the tenant to clean her unit and remove at least half of the clutter no later than November 29, 2016. The notice specified that failure to complete this would result in a 1 Month Notice. The landlord completed the inspection on November 3, 2016 and found the rental unit remained cluttered.

### Tenant

The tenant stated that since the October 25, 2016 photographs were taken she has made some improvement in removing items, admittedly, “not great” but improvement nonetheless. She testified that sometime before Christmas she relocated some items from her rental unit to the garage storage area and plans to donate these items. The tenant testified that the “big” clutter is gone.

### Analysis

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 October of 2016 show an overly crowded, unsanitary rental unit. Every level surface including but not limited to the counters, floor and stove are littered with belongings, from boxes, bags, clothes, papers, furniture, recyclables and other miscellaneous items. Based on the evidence presented I am satisfied on the balance of probabilities that the tenant did not remove half the clutter by November 29, 2016 despite written notice to do so. For this reason, 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 an 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 February 28, 2017 at 1:00 p.m.

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: February 01, 2017

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Residential Tenancy Branch