



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Hume Investments  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, RP, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy and an order requiring the landlord make repairs.

The hearing was conducted via teleconference and was attended by the tenant and the landlord's agent.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's claim for an order to have the landlord complete repairs. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claim is unrelated in that the basis for it rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the tenant's claim for an order to have the landlord complete repairs. I grant the tenant leave to re-apply for this other claim.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the *Act*.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the Act.

### Background and Evidence

The parties agreed the tenancy began in 2005 as a month to month tenancy for a current monthly rent of \$941.00 due on the 1<sup>st</sup> of each month. The parties agreed the tenant paid a security deposit at the start of the tenancy but neither could remember the amount during the hearing.

Both parties submitted a copy of a 1 Month Notice to End Tenancy for Cause issued by the landlord on April 6, 2017 with an effective vacancy date of May 30, 2017 citing a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

Despite the effective date on the Notice the landlord submitted at the outset of the hearing that she would be willing, to extend the end date of the tenancy to July 31, 2017.

The landlord submitted that on March 4, 2017 she completed an inspection of the rental unit. The landlord submitted that she completes these inspections every couple of years. She stated that the rental unit was in such bad shape she provided specific instructions to the tenant of what needed to be done to rectify the situation.

The landlord provided a copy of a letter dated March 7, 2017 stating that the condition of the rental unit was in breach of the tenant's obligations under Section 27 of his tenancy agreement. The letter specifically states: "In section 27 of your Residential Tenancy Agreement it states it is the tenants obligation to maintain health, cleanliness and sanitary standards throughout the rental unit" [reproduced as written].

The letter required the tenant to complete the following tasks within 30 days:

- Clean all floors;
- Steam clean all carpets;
- Clean all walls, cupboards, countertops;
- Clean all window coverings
- Clean all appliances and fixtures, dishwasher;
- Unit must be clear of clutter to allow for easy access in case of emergency;
- Balcony shall be kept clean and clear;
- Must repair any damages within the unit.

The letter closes by stating the landlord will re-inspect the rental unit on April 7, 2017 and failure to comply with the landlord's letter would result in a notice to end tenancy for breach of a material term of the tenancy agreement.

The landlord submitted that due to other commitments she had to change the re-inspection date to April 6, 2017 and she provided the tenant with adequate notice of the change of time. The landlord submits that the work was not completed and the landlord issued that 1 Month Notice on the same date. In support of her position, the landlord has submitted several photographs.

The tenant submits that the landlord should have no right to say how clean he is required to keep his place. He stated that when he moved in the landlord had not cleaned the rental unit; that the carpet was old at the time and the unit walls had not been painted.

The tenant also testified there were no burns in the countertops as suggested by the landlord's testimony. He stated he had made attempts to comply with the landlord's request and in fact had booked the carpet cleaners for April 6, 2017 because the landlord had originally told him she would re-inspect on April 7, 2017, so he could not have the carpets completed in time.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if 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.

Residential Tenancy Policy Guideline #8 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.

To determine the materiality of a term during a dispute resolution hearing, an arbitrator will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, an Arbitrator will look at the true intention of the parties in determining whether or not the clause is material.

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.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I accept that the landlord informed the tenant that they felt the tenant was in breach of a material term; that they provided the tenant with an opportunity to fix the problem and that the problems identified were not all completed by the time the landlord had allowed.

However, I am not convinced the term was material to the tenancy. I make this finding, in part, because the landlord has failed to provide a copy of the tenancy agreement containing the clause and in the absence of providing a copy was unable to read the clause into the hearing. Despite the letter submitted dated March 7, 2017 that states what the tenant's obligations are under Section 27 of the tenancy agreement it does not provide the statement in a way that confirms what was agreed to in the tenancy agreement.

In addition, the reference to Section 27 of the tenancy agreement in the March 7, 2017 makes no mention of damage to the property and yet one of the issues identified by the landlord in this letter includes repairing alleged damage to countertops.

Furthermore, I find that if Section 27 (as described) was material to the tenancy agreement the landlord would be checking for infractions in a timelier manner. The *Act* allows a landlord to inspect a rental unit monthly and this landlord chooses to only inspect every couple of years.

Furthermore, if the wording of the tenancy agreement is as noted in the letter: "maintain health, cleanliness and sanitary standards throughout the rental unit" I find the term to be too vague to be a material. Based on this wording I find it is possible that a landlord might consider that the tenant having one dirty dish in a sink was not maintaining cleanliness and sanitary standards. I find the opportunity for the landlord to find a breach with such a vague term unreasonably prejudices the tenant.

I find it is imperative that to be material a term must provide clarity of both the infraction and the consequences for breach of that term. As an example, if the tenant fails the

pay the rent in full the landlord may end the tenancy clearly identifies both the action that would constitute a breach and the possible ending of the tenancy as a result.

As such, I find the landlord has failed to establish that Section 27 of the tenancy agreement between the parties is a material term and that the landlord should be able to end the tenancy as a result of a breach of a material term pursuant to Section 47 of the *Act*.

### Conclusion

Based on the above, I grant the tenant's Application for Dispute Resolution and order the 1 Month Notice to End Tenancy for Cause issued on April 6, 2017 is cancelled that the tenancy continues in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the fee paid by the tenant for this application. I order the tenant may deduct this amount from a future rent payment, pursuant to Section 72(2)(a) of the *Act*.

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 23, 2017

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Residential Tenancy Branch