



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BONAVIDA MANAGEMENT LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes          OPC, FF, CNC

### Introduction

This hearing dealt with applications from both the landlord and the tenant under the *Residential Tenancy Act* (the *Act*).

The tenants applied for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

The landlord applied for:

- an Order of Possession for cause pursuant to section 55; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

Both parties were represented at the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

As both parties were in attendance I confirmed that there were no issues with service of the parties' respective applications for dispute resolution or either party's evidentiary materials. The parties confirmed receipt of one another's materials. In accordance with sections 88 and 89 of the *Act*, I find that the parties were duly served with copies of their respective applications and their respective evidence.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession? Is the landlord entitled to recover the filing fee for this application from the tenant?

### Background and Evidence

This tenancy originally began on December 1, 2006 with monthly rent of \$700.00 and the tenant paid a security deposit of \$350.00. The tenant named in this application is the father of the tenant named in the tenancy agreement and took over the tenancy shortly after the agreement was signed.

The landlord submitted into evidence a copy of the 1 Month Notice dated May 10, 2017 citing the tenant has caused extraordinary damage to the unit/site or property/park, and the tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord submitted into written evidence photographs of the rental unit showing its condition and correspondence from the landlord to the tenant referencing the need to clean and maintain the rental unit. The landlord's property manager testified that the kitchen of the rental unit is filthy with dirt, grime and oil coating countertops and appliances. She said that the carpets require cleaning and that there is residue on the bathroom tiles. She testified that the rental unit is inspected regularly and the tenant is advised to perform basic cleaning to maintain the unit in a sanitary condition. She said that she is concerned that when this tenancy ends the unit will require additional cleaning and new appliances if the tenant does not properly maintain the unit.

The landlord's apartment manager testified that she has assisted the tenant in cleaning parts of the rental unit in the past. She gave evidence that the windows, curtains and blinds require regular cleaning to avoid mold. She said that the tenant was advised that the landlord could arrange for professional cleaning to be done but the tenant refused as he found the cost prohibitive. The tenant was advised on steps he could take to clean the rental unit himself but the tenant said he was unable to perform much of the strenuous work due to physical ailments. She said that she has worked with the tenant, inspects the rental unit on a regular, monthly basis and has not seen an improvement in the condition of the unit. She testified that the unsanitary condition has so far had no effect on the common areas or other units in the rental building.

The tenant disagreed with the characterization of the rental unit. He testified that the rental unit is habitable and all appliances are functional and usable. He disputes that he caused extraordinary damage to the rental unit through his lack of cleaning.

### Analysis

The landlord seeks to end the tenancy tenant on two grounds, stating that the tenant:

- breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- has caused extraordinary damage to the unit/site or property/park.

The landlord states that the tenant has breached a material term of the tenancy by failing to maintain the reasonable health, cleanliness and sanitary standards of the rental unit. I find that the materiality of this term was the subject of a previous hearing under the file number on the front page of this decision, where a conclusive finding was made. I find that the landlord's application before me is substantially identical to the circumstances of the previous hearing. The landlord relies upon the same terms of the tenancy agreement and I am unable to find that this portion of the 1 Month Notice is anything but an attempt to reargue a matter that was before a previous arbitrator. Accordingly, I find that I have no jurisdiction to consider a matter that has already been the subject of a final and binding decision by another arbitrator appointed under the Act.

I find there is insufficient evidence that the tenant's failure to clean the rental unit has caused extraordinary damage to the unit to justify ending the tenancy. The tenant has testified that the rental unit remains habitable and all appliances are functional. The landlord's own agents have testified that the unit can be brought up to acceptable conditions through cleaning and judicious application of cleaning supplies. I find, on a balance of probabilities, that there is insufficient evidence to show that the tenant has caused damage to the rental unit that is so extraordinary that there is cause for ending the tenancy. Consequently, as I find that the landlord has not shown there is sufficient cause, I allow the tenant's application to cancel the 1 Month Notice.

#### Conclusion

The landlord's application is dismissed.

The tenant's application to cancel the 1 Month Notice is allowed. The 1 Month Notice is of no continuing force or effect. This tenancy continues until ended in accordance with 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: June 29, 2017

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Residential Tenancy Branch