



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC, O, FF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- authorization to recover her filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed that the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Xpress Post. Both parties confirmed that the landlord served the tenant with the submitted documentary evidence via Canada Post Registered Mail on September 18, 2017. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the tenant entitled to a monetary order for recovery of the filing fee?

### Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

This tenancy began on April 1, 2017 on a fixed term tenancy ending on September 30, 2017 and then thereafter on a month-to-month basis as shown by the submitted copy of the signed tenancy agreement dated March 30, 2017. The monthly rent is \$1,500.00 payable on the 1<sup>st</sup> day of each month. A security deposit of \$750.00 was paid.

Discussions during the hearing revealed that the landlord had issued two 1 Month Notice(s) issued for Cause. The landlord clarified that the first 1 Month Notice dated August 21, 2017 was cancelled as she had re-issued a second 1 Month Notice dated August 28, 2017. As such, the hearing shall proceed on the tenant's application to cancel the 1 Month Notice dated August 28, 2017.

On August 28, 2017, the landlord served the tenant with the 1 Month Notice dated August 28, 2017 in person. The 1 Month Notice sets out an effective end of tenancy date of September 30, 2017 and that it was being given as:

- the tenant is repeatedly late paying rent;
- the tenant or person permitted on the property by the tenant has:
  - put the landlord's property at significant risk.

The landlord claims that the tenant has been repeatedly late paying rent on at least 3 occasions. The tenant confirmed this in her direct testimony, but argued that her last late rent payment was in March 2017 and that the landlord had offered and she had accepted a new tenancy agreement which began on April 1, 2017. The landlord confirmed the tenant's direct testimony.

The landlord claims that the tenant caused mold by not turning on the electric heat in the back bedroom. The landlord provided undisputed testimony that the tenant was cautioned to make sure the heat was turned on to prevent mold. The landlord cleaned the mold and the issue resolved. The landlord stated that she has not inspected the rental unit since the months of July/August to determine if there are any issues as the tenant has threatened to call the police if the landlord would contact the tenant. The landlord stated that as such, no notice of inspections have been issued by the landlord. The landlord stated that she feared that the tenant is causing significant damage to the rental property, but has not provided any evidence of ongoing any issues.

The landlord claims that the tenant is causing significant damage to the rental property as there were 6 plugs plugged into a socket sometime in August which could have caused an electrical fire. This claim was disputed by the tenant who provided undisputed affirmed evidence that there were multiple plugs plugged into a socket which caused an electric breaker to trip in November 13, 2016, but that since that incident there have been no further electrical issues after she was cautioned by the landlord. The landlord confirmed the tenant's claim stating that the incident did take place in November 2016 and that there have been no further electrical issues.

### Analysis

In an application to cancel a 1 Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

In this case, I accept the undisputed evidence of both parties that the landlord served the tenant with a 1 Month Notice dated August 28, 2017.

On the landlords' first reason for cause of repeated late payment of rent, I find that the landlord's reason for cause has failed. Although both parties have confirmed that the tenant has been repeatedly late paying rent in the past (the last incident in March 2017), the landlords have confirmed that on March 30, 2017 a new signed tenancy was entered into with the tenant for a fixed term until September 30, 2017. As such, I find that the landlord has failed to act in a timely manner after the most recent late payment of rent and has instead offered a new signed tenancy agreement and has thus waived her right to this provision by rewarding the tenant in this manner.

On the landlords' second reason for cause of putting the landlord's property at significant risk, I find that the landlord has failed. The landlords have cited two issues, one of mold and the other of multiple plugs plugged into a electrical socket. On each issue, the tenant was notified of the problem and there has been no further action required. The landlords have speculated that the tenant could be causing significant damage, but has failed to provide any evidence of such nor has the landlords even serve notice to the tenant to inspect the property for any potential issue. On this, basis, I find that the landlords have failed to provide sufficient evidence of significant damage caused by the tenant.

As the landlords have failed to establish a claim for cause as per the 1 Month Notice, I grant the tenant's application. The 1 Month Notice dated August 28, 2017 is set aside. The tenancy shall continue.

The tenant having been successful is entitled to recovery of the \$100 filing fee. I authorize the tenant to withhold one-time \$100.00 from the next months' rent in satisfaction of the filing fee.

### Conclusion

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

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: October 06, 2017

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Residential Tenancy Branch