



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDC, RP, RR

### Introduction

This matter dealt with an application by the Tenant to cancel a Notice to End Tenancy for Cause, for compensation for loss or damage under the Act, regulations or tenancy agreement, for general repairs to the unit, site or property and for a rent reduction.

The Tenant said she served the Landlord with the Application and Notice of Hearing (the “hearing package”) by personal delivery on January 26, 2018. Based on the evidence of the Tenant, I find that the Landlord was served with the Tenant’s hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance and represented at the hearing.

At the start of the conference call the Arbitrator informed the Parties that the hearing will be focused on the Tenant’s application to dispute the One Month Notice to End Tenancy for Cause dated January 26, 2018. The other issues in the Tenant’s application, compensation for loss or damage under the Act, regulations or tenancy agreement, for general repairs to the unit site or property and for a rent are separate issues to the tenancy continuing or not.

Section 2.3 of the Residential Tenancy Branch Rules of Procedure (Dismissing unrelated disputes in a single application) says an Arbitrator may dismiss unrelated disputes within a single application. Consequently, I find that this hearing will deal with the Notice to End Tenancy only and the Tenant is at leave to reapply for the other claims in the application. The Tenants’ applications for compensation for loss or damage under the Act, regulations or tenancy agreement, for general repairs to the unit site or property and for a rent are dismissed **with leave to reapply**.

### Issues(s) to be Decided

1. Is the Tenant entitled to an order to cancel the Notice to End Tenancy?

### Background and Evidence

This tenancy started on February 14, 2014 as a one year fixed tenancy and then renewed yearly with the last tenancy agreement being a one year fixed term tenancy with an expiry date of February 28, 18. The tenancy is now on a month to month basis. Rent is \$809.00 per month payable on the 1<sup>st</sup> day of the month. A security deposit was paid in the amount of \$325.00 on February 14, 2014. No condition inspection report was completed on move in.

The Landlord's Counsel said that the Landlord issued the 1 Month Notice to End Tenancy for Cause dated January 26, 2018 because the Landlord believes the Tenant breached the tenancy agreement by operating a washing machine in her unit that resulted in water leaking into the commercial tenancy space below the Tenant's rental unit. The Landlord said the reasons are as follows:

1. The Tenant has seriously jeopardized the health and safety or lawful right of another occupant or the landlord.
2. The Tenant has put the Landlord's property at significant risk.
3. The Tenant has caused extraordinary damage.
4. The Tenant breached a material term of the tenancy agreement and has not corrected it in a reasonable period of time. .

The Landlord's Counsel continued to say the Landlord believes the Tenant caused water damage to the rental complex on January 22, 2018 by operating a washing machine in the Tenant's rental unit. The Counsel said the washer caused a back up in the plumbing and the water leaked from the Tenant's unit to the Pharmacy below. The Landlord said there was damage to the ceiling and the pharmacy. The pharmacy owner wrote a letter of complaint to the Landlord about the water leaking problem. The Pharmacists letter is in the Landlord's evidence package and it refers to three separate water related incidents.. Counsel continued to say the tenancy agreement clearly states no washer or dryers are allowed in the rental units. Counsel said this is a material breach of the tenancy agreement. The Landlord said this clause is in the tenancy agreement because the building is old and the plumbing for the rental units does not have the capacity to handle water ejected from a washing machine. The Landlord continued to say the laundry facility is on the third floor above the Tenant's unit and the laundry has separate higher capacity plumbing for the laundry.

The Landlord submitted photographs of video surveillance of the Tenant bringing in the washing machine on January 21, 2018. The Landlord's Counsel said the water incident happened on January 22, 2018 the next day after the Tenant brought the washer into her rental unit. Counsel said this is more than a coincidence.

As a result the Landlord Counsel said the Landlord issued the One Month Notice to End Tenancy for Cause dated January 26, 2018 for the reasons above. The Landlord said they want to end the tenancy.

The Tenant said she has not used the washer in the rental unit. The Tenant continued to say she purchased the washer because it was on sale and she is planning to move to a new rental unit and she believes she will need a washing machine. The Tenant said she is storing the washer for future use. In addition the Tenant said she purchased the floor model and it came with no hose hook up, so she could not have used it. The Tenant said the washer is stored on the balcony of her rental unit.

The Landlord's Counsel said the Landlord believes the Tenant loaded water in the washer by hand, ran a load and when the washer discharged it was too much water for the pipes to handle and the water back up and leaked into the pharmacy.

The Tenant said she has not used the washing machine in the unit.

Further the Tenant said the building has had multiple water issues as the building is old and there have been leaks and blockages in the plumbing many times. The Tenant said there have been two previous leaks and she had nothing to do with either leak.

The Landlord said the two other leaks were in April, 2016 and October 2016. The leaks came from the laundry room on the third floor and the Landlord believes the Tenant was responsible for the washing machine backing up. The Landlord said the Tenant overloaded the washer and it resulted in water backing up and then leaking from the third floor down to the pharmacy.

The Tenant said she did not overload the washer and the laundry machines are old and unreliable. The Tenant continued to say there have been many issues with the laundry machines including the Landlord wanting to up the price to \$3.50 per load for each the washer and dryer.

The parties were offered an opportunity to settle this matter by voluntary mediation as both parties indicated they would like to end the tenancy. A number of options were discussed but no agreement was achieved. The Parties agreed to have the Arbitrator decide the dispute.

The Tenant said in closing that she did not operate the washing machine in the rental unit and she did not cause the water leak that went into the pharmacy. The Tenant said she has been a good tenant and she is trying to find another rental unit as this unit is too stressful and there are a number of issues between her and the Landlord. The Tenant continued to say she has not been able to find another rental unit so she wants to continue the tenancy for now.

The Landlord's Counsel said there is no direct evidence to prove completely that the Tenant ran the washer and it leaked into the pharmacy, but there are too many coincidences between the Tenant purchasing the washer and the water leak not connect the two. Counsel said why would the Tenant buy a washer if she is not moving and not going to use it? The Female Landlord said revenues from the coin washer is about half that of the coin dryer revenues, which may show someone is drying but not using the coins washer. The Landlord Counsel said the Landlord wants to end the tenancy but if it continues the Landlord requests the Tenant not use the washer so that there are no more water issues.

### Analysis

I have reviewed the evidence submitted and the testimony given at the hearing. It appears there are issues between the Landlord and Tenant and as such the parties will abide by this decision pursuant to the Residential Tenancy Act.

For a one Month Notice to End Tenancy for Cause a landlord must prove the reasons given for issuing the Notice to End Tenancy. The Landlord's Counsel has presented a number of circumstantial pieces of evidence that do indicate that the Tenant may have operated the washing machine in her rental unit in breach of the tenancy agreement. Further the tenancy agreement does say no washers and dryers in the rental units. The Tenant said she is storing the washer but it is in the rental unit. Consequently I accept the Tenant has breached the tenancy agreement but not in a material way. The Tenant is on notice as of this decision to correct the breach and remove the washing machine off site from the rental property. I order the Tenant to remove the washing machine from the rental complex no later than April 15, 2018. If the Tenant does not comply with this order the Landlord is at leave to issue another Notice to End Tenancy for Cause with the washing machine as a material beach of the tenancy agreement.

Further as the Landlord's Counsel said there is no direct evidence to prove that the Tenant operated the washing machine in the rental unit. The Tenant and Landlord have both given testimony that there were previous leaks, plumbing issues and the laundry machines are old an unreliable. I find the Tenant has established grounds that there may be other reasons that could account for the water leak. The laundry has had two previous leaks and the Tenant indicated the plumbing in her unit has plugged a number of times. As well the Tenant said there have been other water leaks and plumbing issues in the rental complex. I find the Tenant has established grounds to dispute the

Notice to End Tenancy. Consequently I find for the Tenant and cancel the One Month Notice to End Tenancy for Cause dated January 26, 2018 and I order the tenancy to continue as indicated in the tenancy agreement.

Conclusion

I order the 1 Month Notice to End Tenancy for Cause dated January 26, 2018 is cancelled and the tenancy is ordered to continue as set out in the Tenancy Agreement.

The Tenant is ordered to remove the washing machine by April 15, 2018.

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: March 26, 2018

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Residential Tenancy Branch