



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes

CNC LRE

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution. A hearing by telephone conference was held on November 29, 2018. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "*Act*").

Both parties were represented at the hearing. All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me.

The Landlord confirmed receipt of the Tenant's documentary evidence and Notice of Hearing package. The Tenant confirmed receipt of the Landlord's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Act*, some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss all of the Tenant's application, with leave to reapply, with the exception of the following claim:

- to cancel the 1-Month Notice to End Tenancy for Cause (the Notice).

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

Background and Evidence

The landlord issued the Notice for the following reasons:

*Tenant or a person permitted on the property by the tenant has:*

- *significantly interfered with or unreasonably disturbed another occupant or the landlord.*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

*Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to:*

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*

The Tenant acknowledged receiving the Notice on October 25, 2018. As part of this Notice, the Landlord attached a letter indicating the Tenant has failed to keep the gate clear, as ordered at a previous arbitration. The Landlord also indicated that the Tenant has failed to clean up, and has caused a rat problem. The Landlord also stated as part of the Notice that the Tenant is illegally growing marijuana, which contravenes the law and his tenancy agreement.

During the hearing, the Landlord did not speak to the issue with respect to the gate, and the access to the property. The Landlord focused on the mess of the rental property, how unsightly it is, that there are rats as a result, and that the Tenant is growing marijuana. The Landlord pointed to the photos he provided into evidence (which he stated he took on a couple of different occasions) showing that the Tenants property is messy and unacceptable. The Landlord says this is unsightly, unsanitary, and is causing a rat problem on the property. The Landlord also stated that he gave the Tenant a written warning on September 5, 2018, due to the mess and the marijuana. The Landlord provided several photos of the yard and inside the house. The Landlord stated that he gave the Tenant one week to clean up, but the Tenant did not. The Landlord issued a second warning letter on October 11, 2018, and gave the Tenant another 10 days to clean up. The Landlord issued the Notice to end tenancy on October 25,

2018, after the Tenant did nothing to clean up the mess. The parties explained that this is not their first arbitration hearing, and that the Landlord has issued Notices in the past.

The Tenant stated that the Landlord has been trying to evict him for years and this is just another attempt with no basis. The Tenant stated that this is a farm property, and as such, there are portions of the lot and property which are not as manicured as others. The Tenant stated that he has a tree farm and grows, cultivates, and sells trees (specialty maples etc). The Tenant stated that the Landlord is under the impression he has marijuana plants. However, he denies this. The Tenant stated that the Landlord does not like his potted plants or the mess created by these plants. The Tenant stated that he does not leave food out, and he has nothing to do with the rats in the area. The Tenant stated that since this is a farming area, rats are common, and are not a result of anything he has on the property.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid. I note that the relationship between the parties has not improved since the Notice was issued. However, my focus in this hearing is whether the Landlord had sufficient cause to end the tenancy, at the time the Notice was issued.

I turn to the Notice issued by the landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on October 25, 2018, and applied to dispute it the following day.

After reviewing the Notice, I note that it lists multiple grounds for ending the tenancy, as above. However, it appears that much of the Landlord's testimony and evidence presented at the hearing relates to the Tenant's alleged marijuana cultivation, as well as the messy and unsightly property (which has also caused a rat problem). As such, these are the issues I will focus on, and whether or not it has been sufficiently demonstrated that either of these issues give the Landlord sufficient cause to end the tenancy under any of the grounds selected on the Notice.

I note the Landlord is not pleased with the state of the property. I also note the Landlord took some photos of the property. However, it is not clear when these photos were taken, and they are undated and were taken at different points in time. I note the Landlord has attended the property on several occasions over the last year or so, and it is not sufficiently clear when each of these photos were from. I also note this is not the first arbitration the parties have had, making it even more important to date the photos, and clearly label when they are from, as to allow this proceeding to be distinguished from past proceedings. As a result, I have placed little weight on the photos.

The Landlord alleges that the Tenant grows marijuana and this is in contravention of the law and the tenancy agreement. However, I find there is insufficient evidence to prove the Tenant is growing marijuana as alleged. I note there are photos of some potted plants, many of which appear to be potted trees. I also note the Tenant states he grows specialty maples and such. Ultimately, while I acknowledge there is some evidence the Tenant is growing potted plants, and there is some amount of mess caused by this, I find there is insufficient evidence the Tenant has engaged in an illegal activity or that he is cultivating marijuana in contravention of his tenancy agreement.

With respect to the general mess the Landlord takes issue with, I note the photos are not particularly helpful with respect to what the state of the property was at the material times, and how it has progressed over time. I note the Landlord finds the property unsightly. However, I find there is insufficient evidence to show that there is a health or safety concern. The Tenant stated that some of the “debris” the Landlord takes issue with is directly used for his tree business, and the Tenant denies having anything to do with the rat problem. Although the Landlord believes the Tenant is causing the rat issue, I find there is insufficient evidence to support this, keeping in mind the location and nature of the property and the surrounding properties.

I note that there appears to be limited maintenance being done on the property by the Tenant. However, I do not find the evidence sufficiently establishes that the rental property is at an unreasonable state of health and cleanliness. This is partly due to the undated photos, and their limited weight. That being said, I caution the Tenant to ensure he maintains the property at a reasonable level of health, cleanliness, and sanitation standards in order to prevent any future issues on this matter.

Pursuant to section 32 of the Act, a tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. Although I find the Landlord’s evidence insufficient in this instance to prove the Tenant has not sufficiently maintained the property, I note that this issue may arise again should the Tenant not take steps to keep up with these obligations.

Should this issue arise again, I encourage both parties to take photos, and keep track of the dates, locations, and contents of the photos. This is particularly important due to the fact that the tenancy has been ongoing for years. Being able to identify where, and when they were taken is important for both parties.

I find that the landlord has not provided sufficient evidence to support any of the reasons to end the tenancy; therefore, the Tenant’s application is successful and the Notice received by the Tenant on October 25, 2018, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with his application, I grant him the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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: November 30, 2018

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Residential Tenancy Branch