



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HOLYWELL PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution ("application") seeking remedy under the *Residential Tenancy Act* ("Act"). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated October 26, 2018 ("1 Month Notice") and for an order directing the landlord to comply with the Act, regulation or tenancy agreement.

The tenant and an agent for the landlord AY ("agent") attended the teleconference hearing. The hearing process was explained to the parties and an opportunity to ask questions about the hearing process was provided to the parties. Neither party raised any concerns regarding the service of documentary evidence. The parties provided affirmed testimony and were also given the opportunity to ask questions at the end of the hearing.

I have reviewed all evidence before me that met the requirements of the Residential Tenancy Branch Rules of Procedure ("Rules"). However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Preliminary and Procedural Matters

The parties confirmed their email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties.

Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated two matters of dispute on their application, the most urgent of which is the application to cancel the 1 Month Notice. I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the

1 Month Notice at this proceeding. The balance of the tenant's application is **dismissed, with leave to re-apply.**

Issue to be Decided

- Should the 1 Month Notice be cancelled?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on May 1, 2017 and reverted to a month to month tenancy after April 30, 2018.

The tenant confirmed that he was served with the 1 Month Notice on October 26, 2018. The tenant applied to dispute the 1 Month Notice on November 1, 2018. The 1 Month Notice indicates one cause which is:

“Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.”

And the “Details of Cause” section of the 1 Month Notice states:

“Tenant has been asked repeatedly to remove plywood from deck. Tenant refuses.”

[Reproduced as written]

The agent referred to 6 and 7 of the tenancy agreement Addendum which does not stated that either term is a material term of the tenancy. The agent also referred to three letters submitted as warning letters, none of which state that the tenant has violated a material term of the tenancy.

The agent also confirmed that the landlord did not submit photographic evidence of the “plywood” referred to on the 1 Month Notice.

Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

Based on the above, I find the landlord has provided insufficient evidence to support that the tenant has violated a material term of the tenancy as the tenancy agreement

Addendum 6 and 7 does not refer to a material term of the tenancy, nor does the three letters referred to during the hearing. In addition, the landlord failed to submit photographic evidence of the plywood on the tenant's deck which is mentioned in the Details of Cause section of the 1 Month Notice.

As the tenant disputed the 1 Month Notice within 10 days as required by section 47 of the *Act*, the onus of proof reverts to the landlord to provide sufficient evidence that the 1 Month Notice is valid. I find the landlord has failed to meet the burden of proof. Therefore, I cancel the 1 Month Notice and find that it is of no force or effect.

**I ORDER** that the tenancy shall continue until ended in accordance with the *Act*.

### Conclusion

The tenant's application is successful. The 1 Month Notice dated October 26, 2018 is cancelled and is of no force or effect.

The tenancy shall continue until ended in accordance with the *Act*.

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: December 10, 2018

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Residential Tenancy Branch