



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### Dispute Codes

CNC, MNR, MNDC, ERP, LRE, AAT, FFT

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “Notice”), for the recovery of the filing fee paid for this application, for a monetary order for emergency repairs, for a monetary order for damage or compensation under the Act, for an order for emergency repairs, to suspend or restrict the landlord’s right to enter, and an order to allow access for the tenant or their guests.

The Tenant and the Landlord were both present for the teleconference hearing. Due to a misunderstanding of the call-in directions on the part of the Tenant, she called in at approximately 11:27 a.m. despite the start time of the hearing of 11:00 a.m..

The parties confirmed that the Notice of Dispute Resolution Proceeding package and copies of each party’s evidence was served to the other party as required. Though some minor issues were brought up regarding service both parties agreed they had received the other’s evidence and had had time to review it and could respond.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence and make submissions.

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

### Preliminary Matters

In their Application the Tenant sought multiple remedies under multiple sections of the Act, a number of which were unrelated 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.

As the Tenant applied to cancel a One Month Notice, I find that the priority claim relates to whether the tenancy will continue or end. I find that the majority of the other claims made by the Tenant are not sufficiently related to the Notice or continuation of the tenancy and as a result, I exercise my discretion to dismiss the following claims by the Tenant with leave to reapply:

- Application for a monetary order for emergency repairs
- Application for a monetary order for damage or compensation under the Act
- Application for an order for emergency repairs
- Application for an order restricting or setting conditions on the landlords right to enter the rental unit
- Application for an order to allow access for the tenant or their guests

As a result, the hearing proceeded based only on the Tenant's Application seeking cancellation of a One Month Notice to End Tenancy for Cause and for return of the filing fee.

#### Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled, pursuant to Section 47 of the Act?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the Act?

Should the Tenant be awarded the recovery of the filing fee paid for the Application for Dispute Resolution, pursuant to Section 72 of the Act?

#### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began on August 1, 2018 for a fixed term of one year. Monthly rent is currently \$900.00 and a security deposit of \$450.00 was paid at the outset of the tenancy. The tenancy agreement was submitted into evidence and confirms the details as stated by the parties. The parties also agreed that the tenancy agreement was started with an additional party who was subsequently removed from the agreement.

On October 15, 2018, the Landlord served the Tenant with a One Month Notice by posting it on the door of the rental unit. The Tenant filed an Application for Dispute Resolution on October 24, 2018.

The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- 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.
  - Put the landlord's property at significant risk.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The effective end of tenancy date of the One Month Notice was stated as November 30, 2018.

The Landlord testified that the original tenant that was later removed was the Tenant's boyfriend. He also testified that there was an incident that resulted in the previous tenant being removed from the property by the police and escorted back to remove his belongings. The Landlord testified, and the Tenant confirmed, that she has an order prohibiting the previous tenant from contacting her or being in her vicinity.

The Landlord testified that the previous tenant has been seen since he was removed August 14, 2018 by himself and other members of his family and he believes the Tenant has been sneaking him onto the property. The Landlord testifies to having seen the previous tenant the last time approximately a month ago. The Landlord has entered into evidence a text document where he has transcribed several text messages he testifies were sent to him from the previous tenant.

The Tenant testified that the previous tenant has not been close to her or her property since August 14, 2018 and denies having him on the property since then.

The Landlord testified that the material term that has been breached is the prohibition against stockpiling garbage. The Landlord testified that there was a bear on the property because of the garbage outside around the rental unit and submitted evidence that there was a bear on the deck of the unit.

The Tenant confirms that this happened on one occasion. The Landlord testified that children live in his house on the same property and that the presence of attractants is a danger to those children and the rest of his family as well as the Tenant.

The Landlord testified that he posted a letter on the Tenant's door asking that the garbage be removed, giving a time frame for this to occur. Both parties agree that the garbage was

removed, with the help of the loan of the Landlord's trailer, but the Landlord testifies that garbage has since built up again.

The Tenant denies this and testifies that what is left and is found in the pictures submitted by the landlord into evidence are empty recyclables that have not been removed yet and items still of use to her that are not bear attractants.

The parties agree that some of the items left behind were the property of the previous tenant but the Tenant testifies that he will not be back for them and that they are not bear attractants. The Landlord stated that garbage does not only apply to bear attractants.

The Landlord submitted several photos into evidence showing the outside of the unit and surrounding property from different angles. The Landlord also submitted a copy of the written notice to remove stockpiled garbage and the addendum to the tenancy agreement that is signed by all parties and notes that the stockpiling of garbage is prohibited.

#### Analysis

Based on the testimony and evidence of both parties, and on a balance of probabilities, I find as follows:

Section 47(4) of the Act states that a tenant has 10 days to dispute a One Month Notice from the date it is deemed served. The Notice was posted to the Tenant's door October 15, 2018. Per section 90(c) of the Act the Notice is therefore deemed to have been served three days later on October 18, 2018. The Tenant applied to dispute the notice on October 24, 2018, therefore I find that she applied within the timeframe allowed by the Act.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure state that when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for ending the tenancy are valid.

The first reason the Landlord gave for ending the tenancy was the continued presence of the previous tenant on the property. I find that there is insufficient evidence provided by the Landlord for me to determine that the previous tenant has been on the property recently. Nor is there sufficient evidence for me to find that he is currently interfering or disturbing anyone, jeopardizing the health, safety or lawful right of another or putting the Landlord's property at risk.

The Landlord provided into evidence some written copies of texts that were sent to him from the previous tenant but this notepad document does not provide any dates or the other side of the conversation and so are out of context. The texts provided also do not include threats of physical violence or harm.

The Tenant denies the previous tenant has been on the property since removed and I note that both parties testified he was removed from the property for doing harm to the Tenant not the property or the Landlord.

There was no evidence provided that he is not allowed on the property or is restrained from being near the Landlord or his family. Therefore, I cannot find that this is a valid reason for ending the tenancy in accordance with section 47(1)(e) of the Act. I am not satisfied that he is continuing to visit the property nor that, if he were, he is posing any sort of threat to the Landlord or his property.

The second reason for ending the tenancy on the One Month Notice was a breach of a material term of the tenancy agreement that was not corrected within a reasonable time to do so, pursuant to section 47(1)(h) of the Act.

Section 47(1)(h) of the *Act* states the following in regard to ending a tenancy due to a breach of a material term:

(h) the tenant

- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Residential Tenancy Policy Guideline 8: Unconscionable and Material Terms further provides the following regarding ending a tenancy due to a breach of a material term:

‘To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.’

Upon review of the documentary evidence submitted by the Landlord, in the notice dated September 27, 2018, the Landlord stated that the Tenant must remove the stockpiled garbage in one week and three days. While three of the four points in the Policy Guideline above are met, nowhere in the letter does it state that the Landlord believes the problem is a breach of a material term.

Policy Guideline 8 provides a definition of material term as the following:

‘A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement’.

The Landlord provided the addendum of the tenancy agreement signed by the parties that includes the prohibition against stockpiling garbage. I note that there are several items on this addendum, some of which are written in all capital letters with an exclamation point.

The addendum against stockpiling is written in lower case with appropriate capitalization ended with a period. In looking at this document it appears to me that several items are quite a bit more important than the stockpiling of garbage.

The Landlord's pictures do include some miscellaneous garbage but the majority looks to be items that are not bear attractants such as a car, tires and wheels, furniture, etc. While there are some bags shown there is no way of knowing what is in them nor do they appear to be more bags than could be collected from the house on a given day.

While the appearance is un-tidy it does not, in my estimation, appear to be at the level of excess that would warrant the definition of stockpiling nor the end of a tenancy. I acknowledge that both parties testified to the presence of a bear on one occasion but considering the testimony of both sides I find that the garbage issue is no longer about bear attractants after the Tenant cleaned up after the notice and is now about clutter as there, as testified, have been no subsequent bear sightings.

Considering the above I cannot find that the stockpiling of garbage is a material term or, even so, that the garbage is actually being stockpiled.

Therefore, I am not satisfied that the Landlord proved, on a balance of probabilities, that the tenancy was ended under Section 47(1)(h) of the Act due to a breach of a material term of the tenancy agreement.

Based on the above analysis, I find that the Landlord did not prove that he had cause for ending the tenancy due to the two reasons stated on the One Month Notice.

The One Month Notice, dated October 15, 2018, is hereby cancelled and of no force or effect. The tenancy continues until ended in accordance with the Act. In addition, as I have cancelled the Notice to End Tenancy I find the landlord is not entitled to an order of possession.

As the Tenant was successful in her Application, I award the recovery of the filing fee in the amount of \$100.00. Pursuant to Section 72 of the Act, the Tenant may deduct \$100.00 one time from the next monthly rent payment.

### Conclusion

The One Month Notice, dated October 15, 2018, is cancelled and of no force or effect. This tenancy continues until ended in accordance with the Act.

Pursuant to Section 72 of the Act, the Tenant may deduct \$100.00 from the next monthly rent payment to recover the filing fee paid for the Application for Dispute Resolution.

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: December 03, 2018

---

Residential Tenancy Branch