



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC   OLC   FF

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on November 1, 2018 (the "Application"). The Tenant applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- an order cancelling a One Month Notice to End Tenancy for Cause, dated October 28, 2018 (the "One Month Notice");
- an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement; and
- an order granting recovery of the filing fee.

The Tenant attended the hearing and was accompanied by S.B., a witness. The Landlord attended the hearing. All in attendance provided a solemn affirmation at the beginning of the hearing.

The Tenant testified the Landlord was served with the Application package and documentary evidence in person. The Landlord acknowledged receipt. In addition, the Landlord testified that the documentary evidence upon which he intended to rely was served on the Tenant in person. The Tenant acknowledged receipt. Neither party raised any issue with respect to service or receipt of these documents during the hearing. Therefore, pursuant to section 71 of the *Act*, I find the above documents were sufficiently served for the purposes of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure, and to which I was referred. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issues to be Decided

1. Is the Tenant entitled to an order cancelling the One Month Notice?
2. Is the Tenant entitled to an order that the Landlord comply with the Act, regulation, and/or the tenancy agreement?
3. Is the Tenant entitled to an order granting recovery of the filing fee?

### Background and Evidence

A copy of the tenancy agreement between the parties was submitted into evidence. It confirmed the tenancy began on March 1, 2013. Currently, rent in the amount of \$790.00 per month is due on the first day of each month. The Tenant paid a security deposit of \$350.00, which the Landlord holds.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice on the following bases:

*Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.*

*Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.*

A copy of the One Month Notice was submitted into evidence. The Application confirms receipt of the One Month Notice on October 28, 2018.

During the hearing, S.H. raised three issues of particular concern. First, he testified the Tenant has given keys to S.B., the Tenant's housekeeper, contrary to the tenancy agreement. The Landlord testified that S.B. presents a risk to the building because the Tenant's former housekeeper stole the Tenant's laptop. He testified that S.B. has been seen leaving the building carrying black bags. The Landlord also testified with respect to a disagreement between S.B.'s brother and the Landlord's spouse.

In reply, the Tenant, a truck driver, testified he was unable to maintain his home after the death of his wife roughly 2-1/2 years ago. Accordingly, he hired a housekeeper to assist. The Tenant acknowledged that the first housekeeper he hired stole his laptop but that she was fired immediately as a result. Further, he testified that S.B. came recommended and that reference checks did not produced any concerns. The Tenant acknowledged that S.B. has been provided with keys out of convenience so she can clean his home whether or not he is working. With respect to the black bags referred to by the Landlord, the Tenant testified that these were his bottle collection that was being recycled by S.B.

Second, S.H. testified that the Tenant's dog is not walked enough and urinates inside the rental unit and in the rental property

In reply, the Tenant acknowledged that his dog has had four "accidents" inside the rental property during the tenancy but that these were all cleaned up.

Third, the Landlord testified the Tenant smokes in the rental unit. He stated the Tenant has been asked to smoke on the patio only due to complaints from other tenants about the smell of smoke, but refused to do so.

In reply, the Tenant acknowledges he smokes in the rental unit but noted the tenancy agreement does not restrict his ability to do so.

### Analysis

Based on the oral testimony and documentary evidence, and on a balance of probabilities, I find:

Section 47 of the *Act* permits a Landlord to take steps to end a tenancy for cause in the circumstances described therein. In this case, the Landlord wishes to end the tenancy on the bases indicated on the One Month Notice, described above.

Further, Policy Guideline #8 confirms that 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.

With respect to the Tenant's housekeeper, I find there is insufficient evidence that S.B. presents a significant risk to the Landlord's property. Indeed, the Tenant testified that S.B. came recommended and that references were positive. The Landlord's speculative concerns are not a sufficient basis to end a tenancy on this ground. In addition, although the Tenant acknowledged S.B. was provided with keys contrary to the tenancy agreement, I find there is insufficient evidence to conclude this is a breach of a material term of the tenancy agreement in that it gives the Landlord the right to end the agreement. Indeed, no previous application concerning keys being provided to the Tenant's housekeeper was brought to my attention during the hearing.

With respect to the Tenant's dog, I find there is insufficient evidence to conclude that it presents a serious risk to the Landlord's property. I accept the Tenant's testimony confirming the dog has had 4 "accidents" in the rental property during the tenancy but that these were thoroughly cleaned. The Landlord did not make any submissions suggesting the presence of a dog represents a breach of a material term of the tenancy agreement.

With respect to the Tenant's smoking habits, I find there is insufficient evidence to conclude they present a significant risk to the Landlord's property. Although I accept that other tenants have taken exception with the smell of smoke emanating from the Tenant's rental unit, the One Month Notice was not issued on that basis. In addition, despite the Landlord's testimony that the Tenant has been asked to smoke on the patio area only, I find the tenancy agreement is silent on when and where the Tenant can smoke. Therefore, the Tenant has not breached a material term of the tenancy agreement by smoking in the rental unit.

In light of my findings above, I find that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

The Tenant did not make any specific submissions with respect to the request for an order that the Landlord comply with the *Act*, regulation, and/or the tenancy agreement. However, the Tenant remains at liberty to reapply for this relief pursuant to the *Act*.

As the Tenant has been successful, I find he is entitled to recover the \$100.00 filing fee paid to make the Application. I order that this amount may be deducted from a future rent payment at the Tenant's discretion.

Conclusion

I order that the One Month Notice is cancelled. The tenancy will continue until otherwise ended in accordance with the *Act*.

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 10, 2018

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Residential Tenancy Branch