



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNR CNC RP

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- Cancellation of a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47;
- Cancellation of a 10 Day Notice to End Tenancy for Unpaid Rent (the "10 Day Notice") pursuant to section 46; and
- An order that the landlord perform repairs to the rental unit pursuant to section 33.

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they had been served with the respective materials. Based on the testimonies I find that the parties were each served with the materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 1 Month Notice and 10 Day Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to perform repairs to the rental unit?

### Background and Evidence

This periodic tenancy began in June, 2018. The monthly rent is \$650.00 payable on the first of each month. The parties testified that there is a written tenancy agreement but one was not submitted into evidence. The parties submitted a 2-page document titled "Rental Addendum Unit 2" into evidence.

The landlord issued a 1 Month Notice dated September 11, 2019 indicating the reasons for this tenancy to end as:

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

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant;*

*Tenant has not done required repairs of damage to the unit*

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

The landlord testified that they found that there was a broken bedroom window which was not fixed until recently. The landlord said they have received some noise complaints about the tenant playing music from neighbors and submitted into evidence copies of the written complaints. The landlord submits that the tenant has allowed an unlicensed vehicle to be stored on the property and that the tenant smokes inside of the rental building despite the addendum to the tenancy agreement prohibiting such things.

The landlord also issued an undated 10 Day Notice to End Tenancy for Unpaid Rent. The notice indicates that there is an arrear of \$650.00 payable September 1, 2019. The landlord testified that despite the amount recorded on the 10 Day Notice there was only an arrear of \$50.00 which was subsequently paid by the tenant at some point.

The tenant disputes the reasons provided on the notices for the tenancy to end. The tenant further submits that the rental unit is in a state of disrepair and that the landlord has failed to perform necessary repairs despite written requests to do so. The tenant submitted into evidence copies of correspondence and photographs of the rental suite.

#### Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute

resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

In the present case the evidence shows that the tenant received a 1 Month Notice on September 11, 2019 and filed their application for dispute resolution on September 20, 2019. As such, I find that the tenant was within the timeline provided under the Act to file their application and the landlord bears the burden to show that there is a basis to end this tenancy for the reasons provided on the notice.

I find that there is insufficient evidence in support of the landlord's 1 Month Notice. While the landlord submits that there has been a breach of a material term, neither party submitted into evidence a copy of a written tenancy agreement. The only portion of a tenancy agreement submitted into written evidence is a page titled "Rental Addendum Unit 2".

Residential Tenancy Policy Guideline 8 defines a material term as term of an agreement that is so important that the most trivial breach of that term gives the other party the right to end the agreement. Whether a term in an agreement is material is determined by the facts and circumstances of the tenancy agreement. To end a tenancy for a breach of a material term the party alleging the breach must inform the other party in writing that there is problem believed to be a material breach, that the problem must be fixed by a reasonable deadline, and if the problem is not fixed the party will end the tenancy.

I find, under the circumstances, that the terms contained in the addendum to the tenancy agreement to not be material terms. There is little evidence that the landlord took objection to the storage of an unlicensed vehicle or the tenant's smoking habits prior to the issuance of the 1 Month Notice. There is no evidence that the landlord gave written notice that there has been a breach of a term of the agreement that must be rectified within a reasonable deadline. Based on the conduct of the parties, I find that the terms contained in the addendum to be trivial points that only became of concern to the landlord when issuing the 1 Month Notice. As such, I find that these terms cannot be considered to be material and their breach do not amount to a reason for this tenancy to end.

I find little evidence that the tenant has engaged in illegal activity that has caused damage to the rental unit or that there has been an adverse effect on the quiet enjoyment of others. While the landlord has submitted some noise complaints from a

neighbor, I find there is insufficient evidence that there has been illegal activity by the tenant that is the source of these complaints. I find a handful of complaints by a single neighbor to be insufficient to establish that there is cause to end this tenancy.

I accept the evidence of the parties that repairs to the rental unit window has been performed and find that there is little basis to end the tenancy for the tenant's failure to perform necessary repairs. While I accept that the repairs were not undertaken immediately, I find they were completed in a reasonable time after the parties had some discussions on the subject.

I find that cumulatively and individually the landlord has not established on a balance of probabilities that there is a basis for this tenancy to end. Accordingly, I grant the tenant's application to cancel the 1 Month Notice.

Subsection 46(1) of the *Act* provides that a landlord may end a tenancy if rent is unpaid on any day after it is due by providing a notice that complies with the form content requirements of section 52. In the present case the landlord issued an undated 10 Day Notice indicating that there was an arrear of \$650.00 payable September 1, 2019. The landlord gave testimony that the actual amount of the arrear was \$50.00. Therefore, as the 10 Day Notice is undated and provides a figure that the landlord testified was not owing, I allow the tenant's application to dismiss the 10 Day Notice.

I find there is insufficient evidence in support of the tenant's application seeking repairs to the rental unit. I find the few photographs, and testimony of the parties to be insufficient to find that the landlord has not maintained the rental unit in accordance with the *Act*, such that an order for repairs is appropriate. Consequently, I dismiss this portion of the tenant's application.

### Conclusion

Both the 1 Month Notice and 10 Day Notice are cancelled and of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The balance of the tenant's application is dismissed without leave to reapply.

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: October 28, 2019

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Residential Tenancy Branch