



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Metrowest Building Services  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes            CNC

### Introduction

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

- cancellation of the One Month Notice to End Tenancy pursuant to section 47 of the *Act*.

The landlord's property manager (the "property manager") and the tenant attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The tenant testified that he served the landlord with his application for dispute resolution via Canada Post registered mail after November 7, 2019. The property manager confirmed receipt of the tenant's application for dispute resolution but could not recall on what date. The property manager testified that the One Month Notice to End Tenancy ("One Month Notice") was posted on the door on October 26, 2019 effective date November 30, 2019. I find that the both parties were served in accordance with section 89 and 90 of the *Act*.

Section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the application is dismissed or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Preliminary Matter

At the outset of the hearing, there was a technical issue with the tele-conference system. The parties were disconnected and had to call back into the hearing a few times before the system stabilized.

### Issues to be Decided

Is the tenant entitled to cancellation of the One Month Notice pursuant to section 47 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on January 1, 2019 and is currently ongoing. Monthly rent in the amount of \$480.00 is payable on the first day of each month. A security deposit of \$240.00 was paid by the tenant to the landlord and continues to be held in trust.

The property manager testified that the landlord informed him that discussions had taken place with the tenant regarding smoking in and around the rental unit and the keeping of bunnies.

The landlord issued the One Month Notice on October 26, 2019. The tenant testified that the Notice was posted on her door on the same day it was issued. The One Month Notice had a stated move-out date of November 30, 2019. The grounds stated for ending the tenancy were the following:

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

The property manager testified that the tenant breached a material term of the tenancy agreement. The tenancy agreement stated that smoking was prohibited inside and outside the rental property and pets were also prohibited in the rental. The property manager asserted that the tenant allowed bunnies to run freely in the rental property and the outside area resulting in smell of faeces and droppings throughout the rental unit.

The property manager testified that the landlord had written to the tenant dated September 17, 2019 in which the tenant was told to rectify the situation but failed to do so. He also added that there had been a disturbance with the tenant and his girlfriend resulting in fighting and yelling.

Further, the property manager testified that the landlord had recently looked into the garbage bin and found evidence of bunny droppings and food packaging for the pets.

The tenant admitted that his girlfriend regularly attended the rental property but denied yelling, shouting and disturbing other residents in the neighbourhood.

The tenant testified that he had spoken to the landlord after the written communication and that matters had resolved. Tenant testified that the cigarette butts that were found in the garden depicted in the photographs were not the brand that he smoked.

Tenant testified that his girlfriend no longer brought the bunnies to the rental property but on occasions did bring the bunny cage to be cleaned, hence the bunny droppings in the garbage that the landlord viewed.

### Analysis

The tenant has applied to dispute a One Month Notice issued on October 26, 2019. Residential Tenancy Rule of Procedure 6.6 states;

“The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.” In this case, the landlord must demonstrate why they feel the One Month Notice is valid.

Section 47(1) and section 47(1) of the *Act* state that a landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (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 Branch Policy Guideline #8 states:

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.

I find that in the letter dated September 17, 2019, the landlord notified the tenant of the following:

- there was a problem with the tenant smoking at the subject rental property;
- there was a problem with the tenant having pets at the subject rental property;

- a reasonable deadline to correct the issues was provided;
- the smoking must stop, or the tenant's tenancy would be in jeopardy; and
- the pets must be removed, or the tenant's tenancy would be in jeopardy.

The tenant testified that after he received the September 17, 2019 warning letter, he stopped smoking at the subject rental property and that his girlfriend took the bunnies to her house. The tenant testified that he made an arrangement with his girlfriend that he would clean the bunny cage at his house. The tenant testified that the bunny excrement and cage trimmings were located in his garbage at the end of October because he was cleaning the bunny cage at his house, not because the bunnies were still living at his house.

Based on the evidence, the tenant has breached the terms of the tenancy agreement. The tenant was informed of the breaches in writing and warned that if the behaviour continued, it could lead to eviction.

However, I find the tenant's testimony with reference to the bunny cage and cleaning credible. I find that the tenant was provided an opportunity to amend his behaviour and did so accordingly. I find the tenant's testimony credible that he removed the bunnies to his girlfriend's home and no longer smokes inside or within the vicinity of the building.

When a tenant disputes a notice, pursuant to the Rules of Procedure - Rule 6.6, the landlord has the onus of establishing proof, on the balance of probabilities, that the notice to end tenancy is valid. This means that the landlord must prove, that is more likely than not, that the facts stated on the notice to end tenancy are correct.

I find that the evidence and testimony given by both parties was a reliable and represented version of events, that were equally probable however the test that I have to apply is on the balance of probabilities which is to say, that it is more likely than not that based on the evidence and testimony that events occurred in a certain way as opposed to another.

I have reviewed the photographs and letter from the landlord dated September 17, 2019 and I have listened to the testimonies of the parties, I find that the landlord has not met the burden of proof in this matter. For these reasons, I find that the landlord has failed to provide sufficient evidence to prove on the balance of probabilities any of the grounds set forth in the notice to end tenancy. Accordingly, I grant the tenant's application to cancel the One Month Notice.

The One Month Notice is cancelled and is of no force or effect and the tenancy shall continue until ended in accordance with the *Act*.

### Conclusion

I grant the tenant's application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect and the tenancy continues until 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: January 06, 2020

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Residential Tenancy Branch