



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

<u>Dispute Codes</u>	Landlord:	OPC OPN FF
	Tenant:	CNC

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

The Landlord’s Application for Dispute Resolution was made on March 10, 2020 (the “Landlord’s Application”). The Landlord applied for the following relief, pursuant to the *Act*:

- an order of possession based on a One Month Notice to End Tenancy for Cause, dated February 28, 2020 (the “One Month Notice”);
- an order of possession based on the Tenant’s written notice to end the tenancy; and
- an order granting recovery of the filing fee.

During the hearing, the Landlord advised that the Tenant did not provide written notice to end the tenancy and that this request was made in error. This aspect of the Landlord’s claim has not been considered further in this Decision.

The Tenant’s Application for Dispute Resolution was made on March 3, 2020 (the “Tenant’s Application”). The Tenant applied for an order cancelling the One Month Notice, pursuant to the *Act*.

The Landlord attended the hearing on his own behalf. The Tenant attended the hearing and was assisted by E.N., an advocate. The Landlord and the Tenant provided affirmed testimony.

The Landlord testified the Landlord's Notice of Dispute Resolution Proceeding package was served on the Tenant by registered mail on March 20, 2020. The Tenant acknowledged receipt. Further, the Tenant testified the Tenant's Notice of Dispute Resolution Proceeding package was served on the Landlord by registered mail on March 12, 2020. The Landlord acknowledged receipt. Neither party raised any concerns with respect to service or receipt of these documents. The parties were in attendance and were prepared to proceed. Therefore, pursuant to section 71 of the *Act*, I find the parties were sufficiently served with the above documents for the purposes of the *Act*,

The parties were provided with the 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

1. Is the Landlord entitled to an order of possession?
2. Is the Landlord entitled to recover the filing fee?
3. Is the Tenant entitled to an order cancelling the One Month Notice?

### Background and Evidence

The tenancy agreement submitted into evidence confirms the tenancy began on October 1, 2017. The parties agreed that rent in the amount of \$1,250.00 per month is due on the first day of each month. The parties agreed the Tenant paid a security deposit but did not agree with respect to the amount paid.

The Landlord wishes to end the tenancy. Accordingly, the Landlord issued the One Month Notice. The Landlord testified the One Month Notice was served on the Tenant by posting a copy to the door of the Tenant's rental unit on February 28, 2020. The Tenant acknowledged receipt on that date.

The One Month Notice was issued on several bases. First, the Landlord testified that the Tenant has been repeatedly late paying rent. The Landlord testified the Tenant paid rent late in January, March, April, June, September, and October 2019. Copies of written rent receipts were submitted in support. The Landlord confirmed that rent has been paid on time since.

The Tenant testified that rent has recently been paid on time as stated by the Landlord. Copies of recent rent receipts were submitted in support.

Second, the Landlord testified the Tenant or a person permitted on the property by the Tenant caused extraordinary damage to the unit or property. The Landlord testified the Tenant broke a window and a window covering and caused water damage. The Landlord did not refer to any photographic or other documentary evidence of the damage or of any cost incurred.

The Tenant testified the window covering were damaged when she moved into the rental unit. She also testified the window was broken during a break-in attempt in 2018 and has not been repaired by the Landlord despite requests to do so. The Tenant referred to an arbitrator's decision dated February 20, 2020, in which the Landlord is ordered to repair two basement windows, twelve electrical outlets, finish the basement floor, and install curtain rods. The Tenant was also ordered to allow the Landlord to access to the rental unit. A copy of the previous decision was submitted into evidence by the Tenant who suggested the One Month Notice was issued in retaliation for the outcome of the decision dated February 20, 2020.

Third, the Landlord testified the Tenant has not completed required repairs of damage to the rental unit. He confirmed the required repairs are those referred to above. The Tenant's testimony in response is also noted above.

Fourth, the Landlord testified the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. The Landlord testified the Tenant is noisy and has disturbed another tenant and a neighbour. However, the Landlord did not submit any documentary evidence confirming a complaint from the other tenant. The Tenant denied she is noisy.

The Landlord also testified that the Tenant changed the lock on the front door without authorization. The Tenant acknowledged that the front door lock was changed due to perceived safety concerns. She testified to her belief that someone was entering the rental unit through the front door. However, the Tenant testified the Landlord still has access to the rental unit through the back door.

The Landlord testified the Tenant does not maintain the rental property as required by the tenancy agreement, although he testified that he is willing to do it if the Tenant permits access. The Tenant testified that she maintains the yard with a borrowed lawn mower.

The Landlord testified the Tenant holds public or business meetings at the rental unit which are prohibited by the tenancy agreement. The Tenant denied any business activity at the rental unit.

The Landlord also seeks to recover the filing fee paid to make the Landlord's Application.

### Analysis

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find:

Section 47 of the *Act* sets out the bases for ending a tenancy for cause. First, section 47(1)(b) confirms a landlord may take steps to end a tenancy when a tenant is repeatedly late paying rent. Policy Guideline #38 helps when determining whether or not a tenant has been repeatedly late paying rent. It states:

*Three late payments are the minimum number sufficient to justify a notice under these provisions.*

*It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late*

*A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.*

*In exceptional circumstances, for example, where an unforeseeable bank error has caused the late payment, the reason for the lateness may be considered by an arbitrator in determining whether a tenant has been repeatedly late paying rent.*

*Whether the landlord was inconvenienced or suffered damage as the result of any of the late payments is not a relevant factor in the operation of this provision.*

[Reproduced as written.]

In this case, I find there is insufficient evidence before me to end the tenancy on this basis. Rather, I find the Landlord failed to act on the late payments in a timely manner and has waived reliance on this provision. While I accept that the Tenant was repeatedly late in 2019, the Tenant's payments have been on time for seven months. This basis for wishing to end the tenancy is dismissed.

Second, section 47(1)(f) confirms a landlord may take steps to end a tenancy when a tenant or a person permitted on the property by the Tenant caused extraordinary damage to the unit or property. I find there is insufficient evidence before me to end the tenancy on this basis. The Landlord's claims were not supported by photographic or other documentary evidence. Further, I accept the Tenant's evidence who testified the damage was either present when she moved in or was not caused by her. I also note that the decision issued on February 20, 2020 orders the Landlord to repair the Tenant's windows. This basis for wishing to end the tenancy is dismissed.

Third, section 47(1)(g) confirms a landlord may take steps to end a tenancy when a tenant has not completed required repairs of damage to the rental unit. I find there is insufficient evidence before me to end the tenancy on this basis. The Landlord confirmed the required repairs are those referred to above. However, as these claims were not supported by photographic or other documentary evidence, I find there is insufficient evidence before me to find that the Tenant was obligated to make repairs to the rental unit. Indeed, as noted above, the decision dated February 20, 2020 places the obligation for some of the repairs claimed on the Landlord. This basis for wishing to end the tenancy is dismissed.

Fourth, section 47(1)(h) confirms a landlord may take steps to end a tenancy when a Tenant breaches a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. Policy Guideline #8 states:

*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.*

*To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.*

*The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.*

*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.*

*Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.*

[Reproduced as written.]

In this case, I find there is insufficient evidence before me to end the tenancy on this basis. The Landlord did not provide evidence that the Tenant was advised of the problems in writing, that the problems were a breach of a material term of the tenancy agreement, that the problems must be fixed by a certain deadline, and that if the problem is not fixed by the deadline, the party will end the tenancy. I also find that the breaches referred to by the Landlord are not material in that they are so important that the most trivial breach gives the Landlord the right to end the tenancy. Indeed, for example, the Landlord testified that he has been willing to perform yard maintenance. As a result, I find that this basis for wishing to end the tenancy is dismissed.

After careful consideration of the evidence and submissions of the parties I find it is more likely than not that the One Month Notice was issued in retaliation for the Tenant's successful application described in the decision issued on February 20, 2020.

The Landlord's Application is dismissed without leave to reapply. The Tenant's Application is successful. As a result, I order that the tenancy will continue until otherwise ended in accordance with the *Act*.

### Conclusion

The Landlord's Application is dismissed, without leave to reapply. The Tenant's Application is successful. As a result, I order that the tenancy 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: May 11, 2020

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Residential Tenancy Branch