



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding MORE THAN A ROOF MENNONITE HOUSING  
SOCIETY and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      FFT, CNR, CNC, OJT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on March 01, 2021 (the "Application"). The Tenant applied as follows:

- To dispute a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities
- To dispute a One Month Notice to End Tenancy for Cause dated February 19, 2021 (the "Notice")
- For a determination on jurisdiction because the Tenant is occupying a room in a residential hotel
- For reimbursement for the filing fee

The Agents appeared at the hearing for the Landlord. Nobody appeared at the hearing for the Tenant. I waited 10 minutes at the outset for the Tenant to call into the hearing; however, the Tenant did not do so. I confirmed from the teleconference system at the start and end of the hearing that the Tenant had not called into the hearing.

The Agents advised that there was no 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities issued to the Tenant. The Agents advised that the rental unit is not a room in a residential hotel. The Agents confirmed there is a tenancy agreement covered by the *Residential Tenancy Act* (the "Act") between the parties. The Agents provided the correct rental unit address which is reflected on the front page of this decision.

I explained the hearing process to the Agents who did not have questions when asked. I told the Agents they were not allowed to record the hearing pursuant to the Rules of Procedure (the "Rules"). The Agents provided affirmed testimony.

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence. The Agents confirmed receipt of the hearing package and Tenant's evidence. The Agents testified that the Landlord's evidence was posted to the door of the rental unit May 06, 2021.

Based on the undisputed testimony of the Agents, I accept that the Tenant was served with the Landlord's evidence in accordance with section 88(g) of the *Act*. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the evidence May 09, 2021. I find the Landlord complied with rule 3.15 of the Rules in relation to the timing of service.

Rules 7.3 and 7.4 of the Rules state:

**7.3 Consequences of not attending the hearing**

If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.

**7.4 Evidence must be presented**

Evidence must be presented by the party who submitted it, or by the party's agent.

If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Given the Tenant did not appear at the hearing, the Application is dismissed without leave to re-apply. Further, I have not considered the Tenant's evidence given the Tenant did not appear at the hearing to present it.

The Agents sought an Order of Possession based on the Notice and therefore I have considered this issue.

The Agents did not seek an Order of Possession based on a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities and stated that the Tenant had not been issued a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities. In the circumstances, I have not considered whether the Landlord is entitled to an Order of Possession based on a 10 Day Notice to End Tenancy Issued for Unpaid Rent or Utilities.

The Agents advised that the rental unit is not a room in a residential hotel. The materials submitted do not suggest that the rental unit is a room in a residential hotel. In the circumstances, I have not considered this issue.

The Agents were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Landlord's documentary evidence and the testimony of the Agents. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Is the Landlord entitled to an Order of Possession based on the Notice?

### Background and Evidence

A written tenancy agreement was submitted as evidence. The tenancy started September 05, 2014 and was for a fixed term ending February 30, 2015. The tenancy then became a month-to-month tenancy. Rent is \$732.00 and is due on or before the first day of each month. The Tenant paid a \$514.00 security deposit.

The Notice was submitted as evidence. The grounds for the Notice are:

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

The Details of Cause on the Notice state the issues as the Tenant using the rental unit as a place of business, "unruly" visitors and "overstaying" visitors.

The Agents confirmed the accuracy of the Proof of Service submitted which shows the Notice was posted to the door of the rental unit February 19, 2021. The Proof of Service is signed by a witness.

The Agents submitted that the Tenant has breached terms 15, 16 and 22 of the tenancy agreement and that these are material terms of the tenancy agreement.

I asked the Agents about a breach letter being issued to the Tenant in accordance with Policy Guideline 08. The Agents did not point to a specific letter in evidence as a breach letter and referred to the multiple warning letters sent to the Tenant about the issues outlined in the Notice. The Agents stated that the warning letters did not set out

specific deadlines for the Tenant to correct the breaches. The Agents stated that the warning letters did not refer to a breach of a “material term”.

### Analysis

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

However, the Landlord still has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules.

The Notice was issued pursuant to section 47(1)(h) of the *Act* which states:

47 (1) 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...

The Tenant had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. I accept the undisputed testimony of the Agents and Proof of Service and find the Notice was served on the Tenant in accordance with section 88(g) of the *Act* on February 19, 2021. Pursuant to section 90(c) of the *Act*, the Tenant is deemed to have received the Notice February 22, 2021. The Application was filed March 01, 2021, within time.

Policy Guideline 08 deals with material terms in a tenancy agreement and 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.

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.

(emphasis added)

The Agents were not able to point to a letter in evidence that meets the four criteria outlined in Policy Guideline 08 for a breach letter. The Agents acknowledged that the warning letters sent to the Tenant did not meet the four criteria outlined in Policy Guideline 08 for a breach letter. I have reviewed the letters in evidence and do not see a letter that meets the four criteria outlined in Policy Guideline 08. I note that the letter issued along with the Notice is not sufficient as a breach letter as the breach letter must be issued prior to a One Month Notice being issued.

I find a breach letter must meet the four criteria outlined in Policy Guideline 08 as Policy Guidelines 08 specifically uses the word “must”. Further, I find that a breach letter must meet the four criteria outlined in Policy Guideline 08 so that a tenant understands that the landlord will seek to end their tenancy based on a breach of a material term of the tenancy agreement versus some other basis set out in section 47 of the *Act*.

I am not satisfied the Landlord issued a breach letter that complies with Policy Guideline 08 and therefore am not satisfied the Landlord had grounds to issue the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is dismissed without leave to re-apply.

I am not satisfied the Landlord had grounds to issue the Notice. The Notice is cancelled. The tenancy will continue 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 *Act*.

Dated: June 07, 2021

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Residential Tenancy Branch