



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding KIRK REAL ESTATE SERVICES  
LTD and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

On May 6, 2021, the Tenants submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated April 30, 2021, (“the One Month Notice”). On June 7, 2021 the Tenant requested to amend their application to include the name of a Landlord. The Landlord was in attendance at the hearing and confirmed that she is an owner of the rental unit. Tenant’s application is amended accordingly.

The matter was scheduled as a teleconference hearing. The owners of the property (“the Landlord”) and the Tenants appeared at the hearing. The Tenants were assisted by legal counsel. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me. The parties were informed that recording the hearing is not permitted.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Does the Landlord have sufficient cause/ reason to end the tenancy?

### Background and Evidence

The Landlords and Tenants provided testimony that the tenancy began on August 1, 2009 and is on a month-to-month basis. Rent in the amount of \$1,809.00 is due to be

paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$650.00 and a pet damage deposit of \$650.00.

The Landlord served the One Month Notice to the Tenants. The One Month Notice has an effective date (the date the Tenant must move out) of May 31, 2021.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

*Tenant or a person permitted on the property by the Tenant has:*

- *Put the Landlord's property at significant risk.*

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

The One Month Notice provides information for tenants who receive the Notice. The Notice provides that a tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenants disputed the One Month Notice on May 6, 2021, within the required time period.

With respect to reasons for ending the tenancy, the Landlord testified that the rental unit is being put at risk due to hoarding. The Landlord stated that the hoarding attracts rodents and could cause a fire. The Landlord stated that their house insurance could be affected. The Landlord provided a copy of a caution notice to tenant dated February 26, 2021 pointing out that the Tenants must maintain reasonable health and cleanliness and sanitary standards throughout the rental unit and property. The caution notice indicates the Tenants are not meeting these standards and directs the Tenants to correct the situation by April 30, 2021.

The Landlords provided 54 black and white photo images of the rental unit/ property in support of their application. The photo images are of very poor quality. The Landlords provided an email dated August 26, 2021 from an insurance representative regarding claims and hoarding.

With respect to a breach of a material term of the tenancy agreement, the Landlord stated that the tenancy agreement contains a term that the Tenant shall not store goods on the property. The Landlord clarified that this means the Tenant can not store any

items on the outside/ exterior of the home except vehicles. The Tenant provided a copy of the tenancy agreement.

In reply the Tenants' legal counsel stated that the term of the tenancy agreement makes no sense and is too vague to be enforceable.

With respect to the Landlords' suggestion of risk to the property, the Tenants counsel stated that the home is in an agricultural area and there has always been rats present. Counsel submitted that fortis gas attended the unit without any concern. Counsel submitted that the Tenants have taken steps to remove material from the home. Counsel referred to a photograph of items that do not belong to the Tenants. Counsel stated that the Tenants were given notice to clean up areas and they have complied by taking steps to clean up.

The Tenants counsel submitted that the Landlords have not provided any evidence to establish that the Landlords property is at risk. Counsel stated that the Landlords' complaint is more related to the Tenants lifestyle. Counsel stated that the Landlords acknowledged that some clean up was done.

The Landlord replied that she has not inspected the rental property since April 30, 2021. The One Month Notice was issued on April 30, 2021.

The Landlord replied "yes" it is improved, and then stated it is a hoarding issue. The Landlord stated you cannot even step in the garage.

The Tenants' counsel stated that nothing in the insurance document indicates that the way the Tenants are living causes issues to the Landlord.

### Analysis

Section 6(3) of the Act provides that a term of a tenancy agreement is not enforceable if:

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Section 32 of the Act includes the following:

*(2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.*

Residential Tenancy Branch Policy Guideline #8 Unconscionable and Material Terms is intended to help the parties to an application understand issues that are likely to be relevant. The Guideline provides:

*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.*

*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.*

In the matter before me, the Landlord has the burden to prove that the reason for ending the tenancy is sufficient and valid. Based on the testimony and evidence before me, I make the following findings:

I have reviewed the tenancy agreement and I find the term of tenancy that cites: “*the tenants shall not store goods of any kind on the property (other than operable vehicles)*”. I agree with the Tenants’ counsel that the term is vague. The term does not make any sense because the Tenants are renting the unit and property and it is reasonable to expect that they should be able to enjoy full use of the rental property. I find that the term is so vague and one-sided as to oppress the Tenants rights. I find that the term is unconscionable and is not enforceable.

The Landlords attempt to end the tenancy based on a breach of a term of tenancy is not successful.

With respect to the Landlords suggestion that the Tenants have put the Landlords' property at significant risk, I find that the Landlords have provided insufficient evidence to prove this.

The Landlords black and white images of the property were of such poor quality that I found they had no value. While I accept the Landlords submissions that hoarding may present fire, sanitary, and insurance risks, the Landlord has failed to prove that the Tenants are failing to maintain reasonable health, cleanliness, and sanitary standards.

I find that the Landlord has not provided sufficient evidence that the Tenants have breached a material term of the tenancy or put the Landlords property at significant risk; therefore, I cancel the One Month Notice to End Tenancy for Cause, dated April 30, 2021.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I authorize the Tenants to withhold \$100.00 from one (1) future rent payment.

### Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated April 30, 2021, 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 *Residential Tenancy Act*.

Dated: September 15, 2021

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Residential Tenancy Branch