



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Lynnhaven Society and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC OLC

### Introduction

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

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

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. The tenant represented themselves with the assistance of a friend. The corporate landlord was represented by its agent (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

At the outset of the hearing as both parties were present service was confirmed. The parties each testified that they received the respective materials. At the end of the 20-minute hearing the landlord gave testimony disputing that they were served with the tenant's application for dispute resolution and evidence.

The landlord made reference to the tenant's evidence throughout the hearing, testified that they were aware of the content of the tenant's application and initially confirmed that they were served until providing contradictory testimony at the end of the hearing. Based on the testimonies and conduct of the parties I find that the landlord was served

with the tenant's application and evidence in accordance with sections 88 and 89 of the *Act* and in any event has been sufficiently served pursuant to section 71(2)(c). I am satisfied that there is no undue prejudice to either party or a breach of the principles of procedural fairness in finding that the landlord has been sufficiently served.

### Issue(s) to be Decided

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

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began in the spring of 2019. The rental unit is a suite in a multi-unit building. The parties testified that there is a written tenancy agreement though neither party submitted a copy into documentary evidence.

The landlord issued a 1 Month Notice dated April 30, 2021. The reason provided on the notice for the tenancy to end is that there has been a breach of a material term of the tenancy agreement that has not been corrected within a reasonable time after the tenant was given written notice of the breach. The landlord provided details of the breach saying that the tenant has affixed plastic sheets on the patio of the rental unit. The landlord testified that there is a term of the written tenancy agreement prohibiting tenants from affixing objects to the rental property.

The tenant disputes that they have breached a material term of the tenancy agreement and submits that the plastic sheeting is necessary to protect the rental unit patio from elements and predatory birds in the area. The tenant also gave some evidence regarding their entitlement to utilities and amenities under the tenancy agreement which they say the landlord has discontinued.

### 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.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that there has been a breach of a material term of the tenancy agreement which has not been corrected.

While there is some documentary evidence including correspondence between the parties touching on the issue of the patio alterations, in the absence of the written tenancy agreement signed by the parties I am unable to determine that this is a subject that is contained in the agreement or that it can be considered a material term.

The onus to establish that there is a material term in the tenancy agreement and that it has been breached lies with the landlord. I find their testimony to be insufficient to find that the placement of plastic on the patio is a breach of any term of the tenancy agreement that gives rise to a basis to end the tenancy. In the absence of documentary evidence I am not satisfied that there is any term prohibiting the tenant's placement of items on their patio or that such a term is material to this tenancy. Consequently, I allow the tenant's application to cancel the 1 Month Notice. The notice is of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

The tenant submits that their monthly rent payments include certain utilities and amenities that have been discontinued by the landlord. In the absence of a written tenancy agreement I am unable to determine that the tenant is entitled to the services they claim or that they have been discontinued by the landlord in a breach of the agreement between the parties. I find the testimonies to be insufficient to determine that there has been a breach of the tenancy agreement by the landlord such that an order of compliance is appropriate. Consequently, I dismiss this portion of the tenant's application.

Conclusion

The tenant's application seeking cancellation of the 1 Month Notice is granted. The notice is 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: September 7, 2021

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Residential Tenancy Branch