



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, CNR, FF

### Introduction

On May 14, 2021, the Tenants made an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") to cancel a One Month Notice to End Tenancy for Cause. On July 12, 2021 the Tenants amended the application to include a dispute of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, dated February 10, 2017.

The matter was set for a conference call hearing. The Tenant R.W. and Landlord attended the teleconference hearing.

At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. 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.

### Preliminary and Procedural Matters

The Tenants provided a photograph and a video file as documentary evidence in support of their application. The Landlord stated that he did not receive any documentary evidence from the Tenants prior to the hearing. The Tenant testified that he has no knowledge of whether his co-tenant served the Landlord with a copy of their evidence, and Ms. M.J. has since passed away.

The Tenant provided insufficient evidence that his documentary evidence was served to the Landlord and it is therefore excluded from the hearing.

Neither the Landlord nor Tenant provided the Residential Tenancy Branch with a copy of any notices to end tenancy. Pursuant to section 52 of the Act, and Arbitrator must determine whether a notice to end tenancy is an effective notice. The Landlord stated he would provide copies of the notices to end tenancy after the hearing concluded. The case management system was unlocked to permit the Landlord to upload the notices to end tenancy. After waiting a two-day period, the Landlords have not provided the Residential Tenancy Branch with copies of the notices to end tenancy.

#### Issues to be Decided

- Should the 10 Day Notice dated July 2, 2021, be cancelled?
- Should the One Month Notice dated May 7, 2021, be cancelled?
- Is the tenancy ending and is the Landlord entitled to an order of possession?

#### Background and Evidence

The Landlord and Tenant testified that the tenancy began on January 1, 2021 as a one-year fixed term tenancy. Rent in the amount of \$1,200.00 is due to be paid to the Landlord by the first day of each month. The Landlord provided a copy of the tenancy agreement. The Tenancy agreement provides that the Tenants are to pay a security deposit of \$600.00 and a pet damage deposit of \$600.00. The Landlord and Tenant confirmed that the Tenants paid the Landlord a security deposit of \$600.00. The Landlord and Tenant confirmed that a pet damage deposit has not been paid.

The Landlord testified that the Tenants were served with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 2, 2021, ("the 10 Day Notice"). The 10 Day Notice indicates that rent in the amount of \$600.00 was due on January 1, 2021 and was not paid. The Landlord clarified that the \$600.00 is for the pet damage deposit that was not paid.

The Landlord testified that the Tenant was served with a One Month Notice to End Tenancy for Cause dated May 7, 2021 ("the One Month Notice").

The Landlord testified that the Tenant was served with the One Month Notice by posting it to the Tenants door on May 7, 2021. The Landlord did not provide a copy of the One Month Notice. The Landlord testified that he served the One Month Notice using the

proper form and signed and dated the Notice. He testified that the reasons for ending the tenancy are as follows:

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

- *Significantly interfered with or unreasonably disturbed another occupant or the Landlord.*
- *Seriously jeopardized the health or safety or lawful right of another occupant or the Landlord.*
- *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.*

*Tenant knowingly gave false information to prospective Tenant or purchaser of the rental unit/site property/ park.*

The One Month Notice provides information for Tenants who receive the Notice. The Notice states 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 Tenant disputed the One Month Notice on May 14, 2021 within the required time period.

The Landlord provided testimony regarding the reasons for wanting to end the tenancy. The Landlords reasons included:

- Tenants failed to provide the Landlord with 12 post dated cheques
- The Tenant is smoking within the rental unit.
- The Tenant is parking in an unauthorized parking spot.
- The Tenant kicked the lawn mower injuring the Landlord's wife.
- The Tenant is placing the garbage in the wrong area.

The Landlord testified that the Tenant is only allotted one parking spot but is using two spots which affects access to other occupants living on the rental property. The Landlord stated that the Tenant stopped parking in the second spot in September 2021.

The Landlord testified that the tenancy agreement provides that the rental unit is non-smoking, and he stated that he has provided video footage of the Tenant exiting the rental unit with a lit cigarette.

The Landlord stated that the Tenant places the garbage in an incorrect place which caused a neighbor to complain.

With respect to the issue regarding payment of rent by cheque, smoking in the rental unit; and unauthorized parking, the Landlord was asked whether or not he pointed out to the Tenant that he believes the Tenant is breaching a term of the tenancy agreement and asked him to stop or face further action including ending the tenancy? In reply, the Landlord stated that he did not send any kind of breach letter to the Tenant on these issues.

The Landlord stated that on March 21, 2021 there was an argument between his wife and the Tenant where the Tenant got angry and kicked a lawn mower which rolled into his wife injuring her heel. The Landlord was asked whether they reported the issue to police, and he initially replied "no", but then stated that they reported it to the police in May 2021 after he returned from being out of the country.

With respect to pre-payment of rent by cheque, the Tenant testified that he does not have cheques and he has always paid the rent to the Landlord using e-transfer which is faster than cheques.

With respect to the parking issue, the Tenant testified that he informed that Landlord that he owns a hot-rod vehicle and that the two of them reached a verbal agreement that he could park his vehicle in the corner of the property. The Tenant testified that this arrangement was the only reason he entered into the tenancy because he needs parking for this vehicle. The Tenant testified that months later after a disagreement the Landlord is trying to change the terms of their agreement. The Tenant stated that the Landlord asked him to move the vehicle and he did not agree to move it. The Tenant stated that he does not have any documentary proof in support that there was an oral agreement for the parking.

The Tenant stated that there are six different units on the residential property and the Landlord gets upset and evicts everyone. The Tenant stated that every other tenant living on the property has been evicted by the Landlord. The Tenant submitted that the Landlord does not like them and is trying to push them out.

With respect to the injury allegation, the Tenant testified that the Landlord incorrectly assumed that items/garbage left in the yard belonged to him and asked him to clean it up. The Tenant stated that the items were not his; however, he decided to move them off his yard area when the Landlord's wife appeared and started throwing items back

onto his yard area. The Tenant testified that the Landlord's wife rolled the lawn mower towards him, so he rolled it back. He testified that the mower did not hit/ strike the Landlords foot.

The Tenant stated that the garbage cans were moved because of where he parks his vehicle and that there is no term in the tenancy agreement regarding where to put the garbage cans.

### Analysis

Based on the evidence before me, the testimony of the Landlord, and on a balance of probabilities, I make the following findings:

The 10 Day Notice to End Tenancy for Unpaid Rent or Utilities dated July 2, 2021 is cancelled. I find that a failure to pay a pet damage deposit cannot be considered to be unpaid rent owing under the tenancy agreement. An unpaid pet damage deposit is a ground for ending a tenancy via a One Month Notice to End Tenancy for Cause; however, I note that the Landlord did not select that reason in the One Month Notice that was issued to the Tenant.

With respect to the One Month Notice, in order to end a tenancy for a breach of a material term of tenancy, the policy guideline provides that 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.

### Postdated Cheques

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. I find that the rent is due on or before the first day of each month. I find that the Landlords tenancy agreement term requiring 12 postdated cheques is an

unenforceable term as it is in conflict with the Tenants right to make payment of rent on the day it is due under the tenancy agreement.

### Parking

I have reviewed the tenancy agreement. I find that the agreement provides that the Tenant has one parking spot. I find there is insufficient evidence from the Tenant to establish that the parties reached a verbal agreement that he could park a second vehicle on the rental property. I find that the tenancy agreement carries more weight than the Tenant's submission that there was an oral agreement regarding parking. I find that the Tenant is only entitled to one parking spot. The Tenant is cautioned that if he continues to park the second vehicle on the property, the Landlord may choose to issue another notice to end tenancy and put his tenancy at risk. I find that the Landlord has not provided sufficient evidence to end the tenancy on this issue.

### Smoking

I have reviewed the tenancy agreement. I find that the tenancy agreement provides that the rental unit is non-smoking. The Landlord testified that he has video footage showing the Tenant smoking when coming out of the rental unit; however, this video evidence is not in the Landlord's evidence and is not before me. The Tenant stated that he does not smoke in the unit but does light up at the door when leaving the rental unit.

I find that the Landlord has not issued a breach letter to the Tenant pointing out the term and asking the Tenant to stop any smoking and warning of the consequences of any smoking in the unit. I find that the Landlord has not provided sufficient evidence to end the tenancy on this issue.

### Garbage

I have reviewed the tenancy agreement. I find that the tenancy agreement does not provide any requirement for where the garbage cans must be placed. I find that this issue is not sufficient to warrant ending the tenancy.

### Injury to Landlord

I find that there is insufficient evidence from the Landlord to establish that the Tenant caused an accidental or intentional injury to the Landlord's wife on March 21, 2021. The Landlord's testimony on the specifics of what occurred is secondhand evidence. The Landlord was out of town at the time. The Landlord's wife did not testify despite being

available during the hearing. I find it odd that the Landlords would wait a month and a half before reporting the allegation of injury to police. Furthermore, there is no photograph of any injury sustained, or police report provided, or evidence of how the police responded to the report. The Landlord indicates he reported the issue to Police in May 2021 which is the same time he decided to issue the One Month Notice. It appears to me that the Landlord did not take the alleged incident very seriously at the time and only followed up around the time the Landlord decided to issue the One Month Notice.

The Tenants' application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent dated July 2, 2021 and to cancel the One Month Notice to End Tenancy for Cause dated May 7, 2021 is successful.

The 10 Day Notice and the One Month Notice are cancelled. The tenancy will 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 order the Landlord to repay the \$100.00 fee that the Tenants paid to make application for dispute resolution. I authorize the Tenant to withhold the amount of \$100.00 from one future rent payment.

### Conclusion

The Landlord failed to provide sufficient justification to establish that the tenancy must end.

The Tenants' application to cancel the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities and to cancel the One Month Notice to End Tenancy for Cause is successful.

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 22, 2021

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Residential Tenancy Branch