



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) issued on May 11, 2021.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions at the hearing. Both parties confirmed under affirmation that they were not making a prohibited recording of this hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issue to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy began on April 3, 2020. Rent in the amount of \$3,200.00 was payable on the first of each month. The tenant paid a security deposit of \$1,600.00. This is a commercial tenant.

The parties agreed that the Notice was served on the tenant indicating that the tenant is required to vacate the rental unit on July 2, 2021.

The reason stated in the Notice was that the tenant has:

- Not done required repairs of damage to the rental unit.

The landlord testified that they rented the premises fully furnished to the tenant. The landlord stated that they never would have entered into a tenancy agreement knowing that the tenant would remove their property from the premises and store it somewhere where they could not access it or inspect it, as it was part of the tenancy agreement and was expected to remain within the premises.

The landlord refers to term 17 of the tenancy agreement, which reads as follows,

“Tenant shall properly use, operate and safeguard the Premises, all furniture, furnishing and appliances, and all electrical, gas and plumbing fixtures. Tenant shall immediately notify Landlord of any damage and shall pay for all repairs or replacement caused by Tenant or the guests or invitees of the Tenant, excluding normal wear and tear.”

[Reproduced as written.]

The landlord testified that they have been asking the tenant to return the furniture to the rental premises, to verify its existence, and to ensure it is undamaged, which has not been done.

The landlord testified that the following items are missing:

- Curtain - valued at \$6,000.00
- Night table in the bedroom
- Two chairs and one dining table valued at \$800.00
- Couch (brown color) valued at \$2,000.00
- Two bar chairs one in white one in black
- A number of pictures

The landlord testified that they gave the tenant written notice to return the furniture and they were informed if this was not completed they would be served with the eviction notice that is the subject of the hearing.

The tenant writes in their application the following,

“Landlord stated tenant has not done required repairs but no repairs are expected. Landlord requested to have certain specific items in the rental unit replaced without authority”

[Reproduced as written.]

The tenant’s agent testified that they do not know what the issue is because they will return the furniture at the end of the tenancy. The agent stated that Residential Tenancy Branch Policy Guideline 1 only requires the premise to be returned to the original condition at the end of the tenancy and that is what they plan to do.

The tenant’s agent testified that the tenant had taken the curtain down because the flooring was being replaced in the bedroom and all the furnishings were required to be removed from the room. The agent stated the tenant put the curtain in a large contractor garbage bag and placed it in the living room and believe the garbage bag might have been thrown out by the landlords flooring contractor.

The email sent by the tenant at page 11 and 12 of the landlord’s affidavit is in response to the landlord’s written warning, which states in part as follows:

“1.... I understand at that time the curtains may have been removed and moved to storage. They will securely stored there until the termination of the lease when they will be reinstalled.”

[Reproduced as written.]

The tenant’s agent testified that the couch was disposed of by one of the tenant’s employees and they are fully responsible for the loss.

The affidavit of the tenant, reads as follows:

“One reviving couch in the living room: We acknowledge the presence of a chair in the living room. It was an old stile swiveling chair rotating on a metal axel. During the tenancy and while sitting on the chair the shaft failed and the resident fell down the chair. We verified the matter and we understood it would be very

difficult and costly to have it assessed if it was a wear and tear situation or it may have been considered misuse and we decided the faster and easier way was just to have it replaced before the end of the tenancy. However after putting the replacement budget aside, we realized it would have been too costly to keep using the current breakable furniture since clearly very outdated.”

[Reproduced as written.]

The email sent by the tenant at page 11 and 12 of the landlord’s affidavit states in part as follows:

“3. I guess the black couch in a white environment did not match the décor and it was removed. As said all removed items are in our big warehouse in maple ridge Nothing to worry about it until the end of the tenancy.”

[Reproduced as written.]

The tenant’s agent testified that the balance of the landlord’s items were placed in their own warehouse. The tenant’s agent provided that physical address at the hearing. However, it was not in Maple Ridge, where it was said to have been stored.

The landlord argued at no time did their flooring contractor remove any garbage bag from the living room. The landlord stated they were there when the flooring was installed in the bedroom and there was no garbage bag in the living room.

### Analysis

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

Section 1 of the Act defines "rental unit" which means living accommodation rented or intended to be rented to a tenant.

While neither the Act or the Residential Tenancy Branch Policy Guidelines (the “Guidelines”) contemplate a furnished rental unit; however, I find it reasonable to conclude the furniture provided under the terms of the tenancy agreement would be intended to be rented to the tenant as part of the living accommodation, such as appliances or light fixtures would be.

Section 29 (2) of the Act states , a landlord may inspect a rental unit monthly in accordance with subsection (1) (b). I find this would include all items rented under the tenancy agreement, including furniture to ensure they are not damaged and to assess repairs if needed. I find it reasonable that the landlord's expectation would be that the furnishing rented as part of that tenancy agreement would remain within the rental unit during the tenancy and not be removed unless the tenant had prior written permission from the landlord.

Section 32(3) of the Act states, a tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.

Section 47 of the Act, a landlord may end a tenancy by giving notice to end the tenancy if the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time.

I find it would have been reasonable that if the tenant did not want the use of the furniture or some of the furniture provided under their tenancy agreement to talk to the landlord and have their written expressed permission to remove the furniture to an agreed secured and heated storage site or to ask the landlord if these items could be removed from their tenancy agreement and removed by the landlord.

This was not done in this case. I find the tenant's action by removing the furniture has prevented the landlord from exercising their rights under section 29 of the Act, to inspect, the furniture rented under the tenancy agreement. I find it unreasonable that the tenants have not returned or produced the landlord's property when requested to do so.

The tenant and the tenant's agent have provided two different versions regarding the landlord's curtain. The first version provided by the landlord's agent at the hearing was that the curtain was placed in a garbage bag and may have been thrown out by the landlord's contractor. Even if this is true, which I find highly unlikely, this would be unreasonable and neglectful of the tenant to put the curtain valued at \$6,000.00 in a garbage bag where someone could believe it to be garbage. The second version provided in the tenant's email to the landlord and attached to the landlord's affidavit, which was they **may have** taken down and placed in storage. I note the affidavit of the tenant does not support either version as they do not say what happened to the curtain.

I am also satisfied that the tenant or the tenant's employee has disposed of the landlord's couch. This was admitted at the hearing. However, at no time does a tenant have the authority under the Act, to do so, even if it was broken, as the landlord has the right to inspect, repair and if necessary replace and this action or neglect was a breach of their tenancy agreement as they were required to notify the landlord of any damage as per term 17. Further, the tenant provided in their affidavit that the couch broke due to either misuse by their resident or wear and tear; however, this is not consistent with the tenant's email at page 11 and 12 of the landlord's affidavit where they said it was removed because it did not match the decor.

Based on the tenant's and the tenant's agents conflicting evidence, the affidavit of the tenant, the email in the landlord's affidavit and the inconsistent testimony at this hearing, I find the tenant not to be credible. I find it reasonable to conclude based on the tenant's agent testimony that the curtain and couch are no longer in their possession and were disposed of by their actions or neglect. I find this constitutes damage to the living accommodations.

Further, I find the comment of the tenant "Nothing to worry about until the end of the tenancy" is unreasonable because the landlord is worried about their property as this is the subject of the hearing and has the right to know where their property is located and even on that issue, has been given inconsistent information to where it is located as two different city locations have now been provided.

I also find the tenant's statement in their application that the "Landlord requested to have certain specific items in the rental unit replaced without authority" is unreasonable. I can find no authority under the Act that would give the tenant the right to remove items from a furnished premises which they do not own and were intended to be rented as part of the living accommodation.

While the tenant's agent has referred to the Guidelines regarding the responsibilities of the tenants to return the premises back to the original condition at the end of the tenancy. I find that would only apply if there has been no prior request of the landlord. Further, the Guidelines do not supersede the Act, as the landlord can require the tenant to make repairs for any items provided to them through the terms of the tenancy agreement, subject to reasonable wear and tear, at any time over the course of the tenancy as set out in section 32 of the Act. Especially if the landlord feels their property is being devalued, damaged or taken without their consent, which is the case before me.

In this case, I am satisfied that the tenant has failed to return the furniture to the furnished rental unit and have failed to notify the landlord when damage has occurred to the furniture as required.

In the matter before me, there is a \$6,000.00 curtain and a \$2,000.00 couch which has been disposed of by the tenant, which I find is damage to the living accommodation rented. This cannot be repaired, nor has it been replaced by the tenant. I find it would be unreasonable for the landlord to have to wait “until the end of the tenancy” for the tenant to rectify the problem or to return the furniture if they truly have it in their possession.

I find the Notice issued has been proven by the landlord, is valid and is enforceable. Therefore, I dismiss the tenant’s application to cancel the Notice.

As the tenancy legally ended on the effective date of the Notice, I find the landlord is entitled to an order of possession, pursuant to section 55 of the Act, effective **two (2) days** after service on the tenant.

**I Order the tenant** immediately return to the landlord all furniture provided under the terms of the tenancy agreement. Should the tenant fail to comply with my order the landlord is entitled to claim against the tenant for any loss or damage.

### Conclusion

The tenant’s application to cancel the Notice is dismissed. The landlord is granted an order of possession.

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 30, 2021

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Residential Tenancy Branch