



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, FFT**

### Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

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

- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The landlord attended the hearing and the tenant YL attended the hearing accompanied by her advocate, PL. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's Application for Dispute Resolution and stated she had no issues with timely service of documents. The tenant acknowledged service of the landlord's evidence but disputed my consideration of it because it was not served at least 7 days before the hearing in accordance with Rule 3 of the Residential Tenancy Branch Rules of Procedure. The tenant also argues that it was served via email which was not an agreed to method of service of documents by the tenant.

I advised the tenant that the only two pieces of evidence I had before me from the landlord was a four page long statement from the landlord and a one and a half page long statement from the landlord. No exhibits, photographs or other documents were attached to either statement. The tenant's advocate acknowledged she had those two documents before her and was willing to have them admitted, provided that there were no photographs, exhibits or other documents attached. After giving that reassurance, the landlord's two statements were admitted as evidence.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, the parties were informed that if any recording was surreptitiously made and used for any purpose, they will be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation under the *Act*.

Issue(s) to be Decided

Should the One Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The month to month tenancy began on May 15, 2019 and rent was set at \$1,650.00 per month payable on the first day of each month. A security deposit of \$825.00 and a pet damage deposit of \$500.00 was collected which the landlord continues to hold.

A One Month Notice to End Tenancy for Cause was served upon the tenant by posting it to the tenant's door on June 28, 2021. I note the tenant filed the application to dispute the notice on July 6, 2021. A copy of the notice was provided as evidence. It provides an effective (move-out) date of July 31<sup>st</sup> and gives five reasons for ending the tenancy.

They are:

1. the tenant has allowed an unreasonable number of occupants in the unit/site;
2. the tenant is repeatedly late paying rent;
3. tenant has not done required repairs of damage to the unit/site/property/park;
4. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;
5. tenant has assigned or sublet the rental unit/site without landlord's written consent

Under “details of cause”, where the landlord must describe what, where and who caused the issue and include the date/time, names etc., the landlord writes:

- Not respecting bylaws and violating rules and tidiness of out side unit (among other things listed in previous note)
- Damaged front of unit adding something/barrier not given approval
- Late rent on more than 5 occasions throughout year
- Had additional 2 people living in unit in past without permission
- Buying and selling objects from home, not a registered business or approved

Each party’s testimony regarding each issue will be grouped for ease of reference:

**1. the tenant has allowed an unreasonable number of occupants in the unit/site;**

**landlord:**

in Spring of 2020, two additional adults were living in the home which the tenant denied. A neighbour saw people (man and woman) living there for a few months, but they are no longer there.

**Tenant:**

Late March, 2020, at the start of the pandemic, while the tenant and her co-tenant were separated, a friend came to visit. During this time, the friend became ill and the whole house was quarantined. The friend was in and out of the hospital and during this time the friend’s boyfriend would stay the occasional night. The friend was not an occupant, she was a guest. The landlord and tenant had a discussion, told the tenant the friend had to be added to the tenancy agreement or leave. The friend left.

**2. the tenant is repeatedly late paying rent;**

**landlord:**

The tenant was late paying rent on August 3<sup>rd</sup>, June 2<sup>nd</sup> and May 3<sup>rd</sup>, 2021. Although full rent was paid on these dates, each payment was late. Payments were made by e-transfer.

**Tenant:**

The tenant’s daily limit at the bank is “maxed out”, so she sends funds to her father who in turn pays the rent by e-transfer. The landlord has never advised the tenant that late payments were an issue. The advocate submits that with the exception of the May payment, all transfers emanating from the tenant’s father’s account were sent on the first day of the month, however they may not post until later if the first of the month falls on a Friday or a weekend.

**3. tenant has not done required repairs of damage to the unit/site/property/park;**

**landlord:**

the tenant has been altering the back yard which is a mountainside. The digging done by the tenant is an insurance risk by altering the property. The tenant and co-tenant have also hammered “pieces” onto the exterior of the house for a carport. (“pieces” not fully described). The tenant has removed chunks of the fence and built into the mountainside.

**Tenant:**

In January, the landlord gave the tenant a list of repairs required, or items requiring attention and they were all done to the satisfaction of the landlord’s brother who represented himself as the landlord’s representative. The digging in the yard was done to stabilize the hill with tires. The fence removal was done to repair the gate. It was put back on immediately after being fixed by the tenant.

**4. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;**

**landlord:**

on January 21, 2021, the landlord gave the tenants a list of things that required attention. For example, garbage in the front yard for which the landlord receives monthly complaints from the strata. She personally went over the notice with the tenant and the tenant told her it wouldn’t be an issue anymore. The landlord acknowledges the tenants got things in order and things started to get better but in the spring/summer of 2021, things started going downhill again. On Friday, June 25<sup>th</sup>, the landlord served the tenant with another list of things requiring attention and provided Monday, June 28<sup>th</sup> as a timeframe to have it done. The written notice was served by posting to the tenant’s back door and placing a copy on the tenant’s car. The landlord testified that the items requiring attention included removing uninsured cars, removing items thrown over heaters and digging into the mountainside.

**Tenant:**

After receiving the January 2021 notice, everything was resolved and the landlord’s brother assured her all is good. The second notice was served on a Friday and is not considered served until Monday under the *Residential Tenancy Act*. On Monday, June 28<sup>th</sup>, the landlord served the eviction notice without even coming to see if the issues requiring attention were resolved. The tenant testified that everything in the written notice was done with the exception of moving the car. That couldn’t be done because the co-tenant was out of town and had the keys to the car. The tenant questions what the material term allegedly breached was, since it is not stated in the notice to end tenancy.

**5. tenant has assigned or sublet the rental unit/site without landlord's written consent**

**landlord:**

The landlord testified she didn’t understand that assignment and sublet means that a tenant moves out of the rental unit and another tenant takes their place. The complaint is that there are too many people in the rental unit – mirroring the first complaint in the

notice to end tenancy. No testimony was taken to substantiate this reason for ending the tenancy.

**Tenant:**

No testimony was sought by the arbitrator.

Analysis

The notice to end tenancy was served on June 28<sup>th</sup> and disputed within the 10 day timeframe as required by section 47 of the *Act*, on July 6<sup>th</sup>. When a tenant files a dispute to a notice to end tenancy, the landlord bears the onus to prove the reasons for ending the tenancy pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure.

I will examine each of the landlord's reasons individually.

**1. the tenant has allowed an unreasonable number of occupants in the unit/site;**

The tenant acknowledges that in March 2020, she had a friend stay with her while the tenant was separated from her boyfriend. This happened during an exceptionally unusual time, during pandemic when the tenant, her friend and the friend's boyfriend had to quarantine while the tenant's friend recovered from the virus. I accept the tenant's testimony that the friend vacated the unit when the landlord told her to either add the friend as a tenant to the tenancy agreement or leave.

Neither party provided information on how many bedrooms were in the rental unit. As the onus is on the landlord to prove the validity of the "too many occupants" reason to end the tenancy, I find there is insufficient evidence to satisfy me there wasn't enough room there for the tenant and her houseguest.

**2. the tenant is repeatedly late paying rent;**

While the landlord testified there were 3 late payments of rent, and that the payments were made by e-transfer, I would expect her to provide documentary proof to show when the transfers were made and posted. The only evidence provided for this reason to end the tenancy is the landlord's testimony. The landlord did not even provide a spreadsheet to show when rent was due, and when rent was paid. I find the landlord has provided insufficient evidence to justify an end to the tenancy for this reason.

**3. tenant has not done required repairs of damage to the unit/site/property/park;**

The parties apparently agreed that the requests in the January 2021 letter were addressed to the landlord's satisfaction. While the landlord advises there are other issues of repair and damage to the property, I have not been provided with any photographs, video evidence or other means to determine the extent of the damage the

landlord alleges were done by the tenant. The tenant countered that the “damage” to the mountainside is actually her attempt to remedy the falling slope with tires and repair a gate. Without adequate evidence to prove the extent of the damage alleged by the landlord, I find she has not satisfied me this is a valid reason to end the tenancy.

**4. breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so;**

The landlord testified there were two written notices for the tenant to do the things she asked for, one in January and another in June. The landlord testified that the January notice’s issues were satisfactorily addressed by the tenant however the June 25<sup>th</sup> ones were not. I have reviewed the June written notice and note two outstanding problems. First, the landlord testified the notice was served via posting to the tenant’s door on June 25<sup>th</sup>, which is not considered served until June 28<sup>th</sup>, three days later pursuant to section 90 of the *Act*. In the notice, the landlord provides Monday, June 28<sup>th</sup> at 9:00 a.m. as the deadline to have all the issues addressed. I find that the landlord did not provide the tenant with a reasonable time to correct the issues before issuing a notice to end tenancy – Monday, June 28<sup>th</sup>.

Second, in order for this reason to be effective, the landlord must clearly identify which material term of the tenancy is being breached by the tenant. I find the written notice to be more of a list of things the landlord wants corrected, not a true notice of breach of material term. For the reasons above, I find the 4<sup>th</sup> reason for ending the tenancy to be insufficient.

**5. tenant has assigned or sublet the rental unit/site without landlord's written consent**

The landlord concedes that the tenant did not assign or sublet the rental unit but that she had additional occupants (same issue as #1). This reason for ending the tenancy is invalid.

Conclusion

I find that the landlord has failed to present sufficient evidence to establish cause to end the tenancy. As a result, I ordered that the Notice to End Tenancy be cancelled. The tenancy shall continue with the rights and obligation remaining unchanged until ended in accordance with the *Act*.

As the tenant’s application was successful, the tenant is entitled to recover the filing fee of \$100.00. In accordance with the offsetting provisions of section 72 of the *Act*, the tenant may deduct \$100.00 from a single payment of rent due to the landlord.

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: November 05, 2021