



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      AAT, CNC, LRE, OLC, FFT

### Introduction

Pursuant to section 58 of the Residential Tenancy Act (the Act), I was designated to hear an application regarding the above-noted tenancy. The tenant applied for:

- an order for the landlord to allow the tenant or his guests to access the rental unit, pursuant to sections 30 and 70;
- cancellation of the One Month Notice to End Tenancy for Cause (the Notice), pursuant to section 47;
- an order to restrict or suspend the landlord's right of entry, under section 70;
- an order for the landlord to comply with the Act, the Residential Tenancy Regulation and/or tenancy agreement, under section 62; and
- an authorization to recover the filing fee for this application, under section 72.

Tenants CA, IB (the tenant), AM, NT and AB and the landlord attended the hearing. All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

At the outset of the hearing the attending parties affirmed they understand it is prohibited to record this hearing.

Per section 95(3) of the Act, the parties may be fined up to \$5,000.00 if they record this hearing: "A person who contravenes or fails to comply with a decision or an order made by the director commits an offence and is liable on conviction to a fine of not more than \$5 000."

As both parties were present service was confirmed. The parties each confirmed receipt of the application and evidence (the materials). Based on the testimonies I find that each party was served with the respective materials in accordance with sections 88 and 89 of the Act.

I note that section 55 of the Act requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the Act.

### Preliminary Issue - Unrelated Claims

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an application for dispute resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the Notice and the continuation of this tenancy is not sufficiently related to any of the tenants' other claims to warrant that they be heard together.

The tenants' other claims are unrelated in that the basis for them rest largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the notice. I exercise my discretion to dismiss all of the tenants' claims with leave to reapply except cancellation of the notice to end tenancy which will be decided upon.

### Issues to be Decided

Are the tenants entitled to:

1. Cancellation of the Notice?
2. An authorization to recover the filing fee?
3. If the tenants' application is dismissed, is the landlord entitled to an order of possession?

### Background and Evidence

While I have turned my mind to the evidence of the attending parties, not all details of the submission and arguments are reproduced here. The relevant and important aspects of the tenants' claims and my findings are set out below. I explained rule 7.4 to the attending parties; it is the landlord's obligation to present the evidence to substantiate the Notice.

Both parties agreed the tenancy started on December 01, 2020. Currently, monthly rent is \$5,125.00, due on the first day of the month. At the outset of the tenancy a security deposit of \$2,375.00 was collected and the landlord holds it in trust.

The tenancy agreement signed by the prior tenants and the landlord on July 03, 2020 indicates the fixed-term tenancy starts on September 01, 2020 and ends on August 31, 2021. The prior tenants and the landlord agreed the tenants must move out at the end of the fixed-term tenancy.

On October 30, 2020 the tenants signed a document:

We, AM, IB, AB, and two more people (information to be given to landlord) hereby agree to take over and to continue the tenancy lease agreement signed by [redacted for privacy] signed July 3, 2020.

We agree to all the terms and condition of the tenancy lease agreement including the move-in condition inspection report signed September 01, 2019.

We agree we are committed to stay to the end of August 2021 [...].

Both parties agreed the landlord served the Notice and the tenants received it on July 18, 2021.

The Notice is dated July 18, 2021 and the effective date is August 31, 2021. The tenants submitted the application on July 21, 2021 and continue to occupy the rental unit.

The reason to end the tenancy is: "Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."

The details of the cause are:

The tenants on this Notice took over the lease from previous tenants (in a sublease) and agree to all terms and conditions of the tenancy lease and conditions of the tenancy lease and the tenancy clearly specified that the tenancy and lease will terminate August 31, 2021 and the tenants must move out. See note of tenants on this notice agreed commitment to stay to the end of August 2021 and not beyond. Further, landlord still have part of the previous tenants' damage deposit and all parties including the previous tenants are waiting for the tenancy and agreement to end and finalize on August 31, 2021.

The landlord affirmed the tenants sublet the rental unit from the prior tenants and agreed to vacate the rental unit on August 31, 2021. The landlord stated there was a fire in a house one block from the rental unit and her rental unit is at risk because there are five tenants. The landlord testified the tenants must vacate the rental unit by August

2022 to avoid financial losses. The landlord did not warn the tenants in writing about breaching a material term.

The tenant said the tenancy agreement started on December 01, 2020, the tenants did not agree to occupy the rental unit until August 2022, and they are not subtenants. The tenant affirmed the landlord did warn in writing or verbally about breaching a material term. The landlord served the Notice because the tenants refused to sign a new fixed-term tenancy agreement and listed the rental unit on July 22, 2021 for \$6,000.00.

### Analysis

I accepted the undisputed testimony that the landlord served the Notice and the tenants received it on July 18, 2021. I find the tenants' application was submitted before the ten-day deadline to dispute the Notice, in accordance with Section 47(4) of the Act.

Pursuant to Rule of Procedure 6.6, the landlord has the onus of proof to establish, on a balance of probabilities, that the notice issued to end tenancy is valid. This means that the landlord must prove, more likely than not, that the facts stated on the notice to end tenancy are correct and sufficient cause to end the tenancy.

Section 47(1)(h) of the Act states:

A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

- (h) the tenant
- (i) has failed to comply with a material term, and
- (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

Residential Tenancy Branch Policy Guideline 8 defines a material term and sets conditions to end a tenancy because of a breach of a material term. It states:

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.**

**The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question.** It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

**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<sup>2</sup>, 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.

**(emphasis added)**

Based on the landlord's undisputed testimony, I find the landlord did not serve the tenants a written notice to correct a breach of a material term of the tenancy agreement. Thus, the landlord cannot end the tenancy under section 47(1)(h) of the Act.

The landlord failed to prove, on a balance of probabilities, the ground of the Notice. Accordingly, I cancel the Notice dated July 18, 2021.

As the tenants were successful in this application, pursuant to section 72 of the Act, I authorize the tenants to recover the \$100.00 filing fee. I order that this amount may be deducted from a future rent payment.

### Conclusion

The Notice dated July 18, 2021 is cancelled and of no force or effect. This tenancy will continue in accordance with the Act.

Pursuant to section 72(2)(a) the tenants are authorized to deduct \$100.00 from a future rent payment to recover the filing fee.

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 23, 2021

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Residential Tenancy Branch