



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC-MT, LRE

### Introduction

The Tenant filed an Application for Dispute Resolution on August 20, 2021 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). Their Landlord issued this One-Month Notice on August 10, 2021. The Tenant also seeks a restriction or suspension of the Landlord’s right to enter the rental unit.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on December 30, 2021. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and I provided each the opportunity to present oral testimony and make submissions during the hearing. Each party confirmed they received the prepared evidence of the other in advance of this hearing.

### Preliminary Matters

- Though a copy of an amendment form signed by the Tenant on September 12, 2021 appears in the Landlord’s evidence, the Tenant in the hearing confirmed they did not amend their original Application. There is no indication in any of the spaces on that form what the amendments are. The issue in this hearing, with no other amendment, is thus listed below.
- The *Residential Tenancy Branch Rules of Procedure* permit an Arbitrator the discretion to dismiss unrelated claims with or without leave to reapply. Rule 2.3 describes ‘related issues’, and Rule 6.2 provides that the Arbitrator may refuse to

consider unrelated issues. It states: “. . . if a party has applied to cancel a Notice to End Tenancy or is seeking an order of possession, the arbitrator may decline to hearing other claims that have been included in the application and the arbitrator may dismiss such matters with or without leave to reapply.”

As I stated to the parties in the hearing, the important matter here is the possible end of this tenancy. The Tenant's Application shows they ask for a restriction or suspension on the Landlord's right to enter the rental unit. This piece of the Tenant's Application is dismissed, with leave to re-apply. Though the Landlord spoke to the issue of their scheduling inspections with the Tenant, that issue is irrelevant in this hearing and is not related to any of the reasons the Landlord checked on the One-Month Notice.

- The One-Month Notice provides an instruction to a tenant that they have 10 days to dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. On their Application, the Tenant indicated they need more time to dispute the One-Month Notice. The Tenant received the One-Month Notice on August 10, 2021 and applied for this hearing on August 20, 2021. I find this is within the required application timeframe; therefore, this is an irrelevant issue and does not require my determination.

#### Issue to be Decided

Is the Tenant entitled to a cancellation of the One-Month Notice issued by the Landlord on August 10, 2021?

#### Background and Evidence

The Tenant presented their understanding of what the original agreement between the parties was regarding this tenancy. They recall having the original rent amount set at \$1,500 payable on the first of each month, and they would pay utilities. They paid \$750 for a security deposit and had a walk-through meeting and signed an agreement with the Landlord at the start of the tenancy on April 5, 2019. At the outset, they informed the Landlord they would have a roommate, and would be acquiring a dog in the future.

The Landlord recalls going through the rental unit with the Tenant at the beginning. They “had trouble getting [the Tenant] to tell who was going to be living there.” The

Tenant never mentioned pets; however, the Landlord said to them only outdoor pets were allowed. The Landlord specified that the original agreement was for \$2,000 per month for rent; however, the Tenant would help with smaller maintenance, so this was lowered to \$1,500 per month. The Landlord confirmed rent was due on the first of each month.

The Landlord issued the One-Month Notice on August 10, 2021 for the end-of-tenancy date of September 30, 2021. They indicated the following reasons on page 2:

- ☐ repeated late payment of rent
- ☐ putting the Landlord's property at significant risk
- ☐ extraordinary damage to the unit
- ☐ Tenant has not done required repairs of damage to the unit
- ☐ Tenant has assigned or sublet
- ☐ security or pet damage deposit was not well paid within 30 days as required by the agreement

In the details the Landlord noted miscellaneous points. I reviewed each of the categories indicated by the Landlord in the hearing. The parties provided testimony and evidence on each of the points as follows:

- repeated late payment of rent

The Landlord provided bank statements to show late transactions where the Tenant paid electronically, and these were accepted by the Landlord. For earlier cash transactions, the Landlord provided receipts. They provided that "sometimes [the Landlord] was nice". There are 15 repeated instances of late rent payments, with either partial payments, or just all late. Additionally, sometimes the rent amount was reduced because of a needed purchase (like the dryer), or time the Tenant spent for labour on maintenance or other repairs on the property. The Tenant had a separate agreement with the Landlord's ex-spouse for work completed.

The handwritten receipts in the Landlord's evidence show payments of \$1,500 from May 2019 through to December 2021. These record the payment dates for each month of rent. August, October, November 2020 and February March 2021 are the months in which payments came past the 1<sup>st</sup> of each month, in the period leading up to the One-Month Notice issued on August 10, 2021. The balance history account sheets provided by the Landlord match these same records. The Landlord's own screenshots of etransfer notifications, with their notes, show the same information.

The Tenant agreed that at the start they were paying rent in cash. A couple of times they were late, but they communicated at these times to the Landlord and the Landlord “seemed understanding.” The Tenant also mentioned instances when the Landlord was out of town and not able to receive rent. Focusing on the timeframe prior to the One-Month Notice, the Tenant thought there were only two times when they were late paying the rent.

The Tenant also spoke to deductions made for their work completed. They presented how they purchased specialized equipment to deal with a frozen drain. They asked for a deduction from rent for this purchase; however, the Landlord said no to that deduction.

- property at risk – extraordinary damage – required repairs of damage

The Landlord presented an issue from one year ago, concerning a certain area of the property with plumbing underground. The Landlord also referred to the pictures they provided to show an area of the siding melted from the Tenant’s barbecue use, repairs to a door and window, and repairs to a stairwell. Additionally, there is a wellhouse that required maintenance; however, it became frozen over. There were also 2 floods in the bathroom that the Tenant had not informed the Landlord about until three or four days after the event.

The Tenant is a carpenter by trade. They spoke to specific instances of damage or disrepair mentioned by the Landlord. Each issue was either resolved, even more recently, or else not an issue or real damage. In the case of melted siding, they communicated that issue to the Landlord right away and mentioned they would fix that. The Landlord was okay with that, and then the Tenant was surprised that it became a reason for the Landlord issuing the One-Month Notice. The Tenant referred to this as being “blindsided” because there were issues with the property; however, these were communicated to the Landlord and the arrangement was for Tenant to fix the issue and pay for material on their own.

- Tenant assigned or sublet without the Landlord’s approval

This is the issue presented by the Landlord that they had no knowledge of the other people who were living in the rental unit. The Landlord spoke of a list of names and their knowledge that other residents had come and gone from the rental unit since the start of the tenancy. They had to “chase down that information” from the Tenant.

The Tenant recalled the initial signing of the agreement, with the discussion that others would be staying, with the “mutual decision [i.e., between Landlord and Tenant] that the agreement would have the Tenant’s name only. The Tenant

- deposit not paid

Neither of the parties spoke to the issue of an unpaid deposit. The Landlord submitted the Tenant was keeping pets; this was not allowed as per the agreement. The Landlord specified outdoor pets only. The Landlord referred to a cat that was unknown to them, and dogs.

The Tenant’s recollection was that the Landlord was aware from the very beginning of the tenancy that the Tenant would be getting a dog. There was no agreement on outdoor pets only and this was only ever brought up again on the One-Month Notice.

### Analysis

The *Act* s. 47 provides that a Landlord may end a tenancy by giving a One-Month Notice to end the tenancy if any of the reasons listed in that section applies. This is reflected on the One-Month Notice document where the Landlord indicated different reasons.

In this matter, the Landlord has the onus to prove that any of the reasons indicated for ending the tenancy is valid and sufficient. Based on the evidence and testimony before me, I make the following findings:

- repeated late payment of rent

There is no record of the Landlord advising the Tenant of late rent and the Landlord did not present an account of their having to give reminders to the Tenant or inquire on this. Because of this, I find the Landlord did not advise the Tenant more formally about late rent payments causing a problem. On my review of the Landlord’s payment record, I find there is no consistent pattern of late rent payments to a significant degree, and the Landlord did not present how the payment delays presented a particular problem for them. I am not satisfied the late payments that are reflected in the record – merely by a matter of days – proved problematic for the Landlord such that they feel the Tenant violated the *Act* or the tenancy agreement. Additionally, there is no month during the

tenancy that is unaccounted for, and no evidence of a balance carryover to a following month where rent was not paid.

With no consistent pattern, and no mention of warnings from the Landlord to the Tenant, I find this constitutes a fundamentally unfair reason to end the tenancy. I find this is not a situation where the Tenant was purely negligent or otherwise careless in payment of rent to the Landlord. Minus messaging from the Landlord of this, the Tenant was not aware this was a problem for the Landlord.

- property at risk – extraordinary damage – required repairs of damage

With the original tenancy agreement, the arrangement was for the Tenant to make repairs as needed. I find this was the entire reason for a reduction in the initial rent amount to \$1,500 as mentioned by the Landlord in the hearing. I accept that the Tenant was aware of this arrangement from the outset and throughout the whole duration of the tenancy. I accept the Tenant's version and explanation on each issue presented by the Landlord here. I find there is insufficient evidence to show the Tenant placing the property at risk, with no evidence of behaviour or actions posing a risk of damage to the property. Similarly, the Landlord presented no evidence of ongoing issues for which they made requests for repair to the Tenant that were either ignored or made worse through the Tenant's neglect.

Under these grounds, I accept the Tenant's account that they communicated about issues to the Landlord throughout, and they were surprised when these became a reason for the Landlord wanting to end the tenancy. The issue of burnt siding occurred in summer 2020, one year before the Landlord issued the One-Month Notice. The onus is on the Landlord to show these are valid reasons to end the tenancy. There is insufficient evidence to show the Tenant is putting the Landlord's property at risk, caused extraordinary damage, or failed to make repairs as required.

- Tenant assigned or sublet without the Landlord's approval

I am not satisfied this is an issue from the Landlord's perspective to a significant degree that warrants an end of the tenancy. This is a situation where co-habitants contribute to the rent, and not a situation of assignment or sublet. There is no record of the Tenant seeking renters independently or neglecting to ask the Landlord for this. Strictly speaking, what the Landlord presented here about not knowing who was residing at the property at any given time is not a situation or where they did not allow subletting or assignment of the tenancy.

This ground indicated on the One-Month Notice does not fit the scenario described by the Landlord here. In the details section on the One-Month Notice, the Landlord wrote “unapproved tenants”; however, the Landlord did not show this was a requirement or ever stated thus to the Tenant.

- deposit not paid

This is an issue of the Tenant’s pets, rather than an issue of a deposit not paid. I find the Landlord made this indication on the One-Month Notice because of the mention of “pet damage deposit”. There is no record of the Landlord making a request for a pet damage deposit and the Landlord did not state this was the case in the hearing. Strictly speaking, this ground indicated on the One-Month Notice does not apply to the situation here with the Tenant’s keeping of pets.

Aside from this, there is no record that the Landlord was explicit in stating to the Tenant that only outside pets were allowed. The Landlord did not produce a copy of the tenancy agreement and there is no record presented by the Landlord to show they made that explicit to the Tenant here. I find it more likely than not this was a situation where the Landlord did know about the Tenant’s but did not act on it until the issue came up on the One-Month Notice. I find the Tenant credible on this point, minus any specific evidence from the Landlord providing otherwise.

With each of the grounds indicated on the One-Month Notice not met with sufficient evidence by the Landlord in the hearing, I cancel the One-Month Notice for this reason. The Landlord provided more evidence on events and their communication to the Tenant *after* they issued the One-Month Notice; however, my consideration here is limited to whether the Landlord had valid reasons for issuing the One-Month Notice in an attempt to end the tenancy. I find they did not for the reasons listed above.

Conclusion

For the above reasons, I order that the One-Month Notice issued by the Landlord on August 10, 2021 is cancelled and of no force or effect. The tenancy shall continue.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: January 4, 2021

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Residential Tenancy Branch