



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FFT

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel One Month Notice to End Tenancy for Cause, (the “Notice”) issued on September 23, 2021, to have the landlord comply with the Act and to recover the cost of the filing fee.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing. Both parties confirmed they were not recording this hearing.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the tenant indicated several matters of dispute on the Application for Dispute Resolution, the most urgent of which is the application to set aside the Notice. I find that not all the claims on this Application for Dispute Resolution are sufficiently related to be determined during these proceedings. I will, therefore, only consider the tenant’s request to set aside the Notice and the tenant’s application to recover the filing fee at these proceedings. The balance of the tenant’s application is dismissed, with leave to re-apply.

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.

### Issues to be Decided

Should the Notice be cancelled?

### Background and Evidence

The tenancy originally began on September 1, 2016, as the tenant was renting unit #4 with a co-tenant. Later in September 2018, the tenant moved into unit #3. The tenancy continued under the same terms as the original tenancy agreement as it was initial by the landlord and tenant, not the co-tenant.

Current rent in the amount of \$799.97 is payable on the first of each month. The tenant under the original tenancy paid a security deposit of \$375.00. Each tenant under that agreement paid \$187.50.

The parties agreed that the Notice was served on the tenant indicating that the tenant(s) are is required to vacate the rental unit on November 1, 2021.

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

- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so; and
- Security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.

The landlord testified that the tenant has breached a material term of the tenancy agreement because the tenant's roommate moved out in May 2017, leaving a balance due of unpaid rent in the amount of \$375.00. The landlord stated they applied the roommate's portion of security deposit of \$187.50; however, that left a balance of unpaid rent of \$187.50. The landlord stated that they asked the tenant to pay this amount in January 2020, July 2021, and in August 2021, which the tenant is refusing to pay.

The landlord testified that because they applied the roommate's portion of the security deposit that now leaves the security deposit of \$187.50 owing by the tenant. The

landlord confirmed they did not have the permission of the tenant or their co-tenant to apply the security deposit towards the unpaid rent.

The landlord testified that tenant is smoking and obtaining private information for them, such as the BC Company Summary.

The tenant testified that when their roommate moved out in 2017 and did not pay their portion of rent the landlord excused them from paying the debt owed by their roommate. The tenant testified that the landlord is only trying to end their tenancy because their rent is low.

### Analysis

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

In this case, I find that landlord has not proven the reasons set out in the Notice.

The landlord is alleging a breach of a material term of the tenancy agreement; however, there is no term in the tenancy agreement regarding smoking. Further, simply because the tenant has obtained information on the landlord, these are not private documents, they are public records. Therefore, I find there is no breach of a material term of the tenancy agreement by the tenant.

The landlord is alleging unpaid rent and an unpaid security deposit.

Firstly, the combined security deposit the tenants paid under the tenancy agreement made in 2016, was the amount of \$375.00. While I accept each tenant paid a portion; however, the security deposit is held by the landlord until the tenancy ends for both tenants and that agreement was transferred to a new rental unit in 2018, after the other co-tenant vacated and only the tenant and landlord initialed that change.

Secondly, the landlord does not have the right to apply any portion of the security deposit towards unpaid rent simply because they feel justified. A landlord can only keep a portion of the security deposit if agreed to by the tenant in writing. The evidence of the landlord was they did not have the agreement of either tenants to keep any portion of the security deposit.

I find the tenant did pay their security deposit as required by the Act. Therefore, I find the landlord has failed to prove a violation of the Act by the tenant.

Further, the unpaid rent occurred in 2017, which it appears the landlord agreed to waive. I find it is unreasonable that the landlord four years later is attempting to end the tenancy for this reason. I find the tenant had the right to rely upon the actions of the landlord.

Based on the above, I find the Notice must be cancelled and the tenancy will continue until legally ended under the Act. Therefore, I grant the tenant's application to cancel the Notice.

I also note that by the written details of the landlord in the Notice that they are clearly are not happy that the tenant's rent is lower than other tenants. However, that is not the fault of the tenant, especially when the landlord has not given notices of rent increase that they were entitled to give once per year.

As the tenant was successful with their application, I find the tenant is entitled to recover the cost of filing their application from the landlord. I authorize the tenant a onetime rent reduction of \$100.00 from a future rent payable to the landlord in full satisfaction of this award.

### Conclusion

The tenant's application to cancel the Notice is granted. I authorize the tenant a onetime rent reduction from a future rent payable to the landlord to recover the cost of 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: February 14, 2022

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Residential Tenancy Branch