



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Singla Bros Holdings Ltd and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC, RR, FFT

### Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. An Order cancelling a notice to end tenancy - Section 47;
2. An Order for the Landlord’s compliance - Section 62;
3. An Order for a rent reduction - Section 65; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. An Order of Possession - Section 55; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties confirm the exchange and receipt of each other’s evidence packages. The Parties confirm that no recording devices are being used for the hearing.

### Preliminary Matter

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure provides that claims made in an application must be related to each other and unrelated claims may be

dismissed with or without leave to reapply. As the Tenant's claim for compliance and a rent reduction are not related to whether or not the tenancy ends, I dismiss these claims with leave to reapply. Leave to reapply is not an extension of any limitation period.

#### Issue(s) to be Decided

Is the Tenant entitled to a cancellation of the notice to end tenancy?

Is the Tenant entitled to recovery of their filing fee?

Is the Landlord entitled to an order of possession?

Is the Landlord entitled to recovery of their filing fee?

#### Background and Evidence

The following are agreed or undisputed facts: the tenancy started on November 15, 2019. Rent of \$1,400.00 is payable on the first day of each month. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. On January 5, 2022 the Tenant received a one month notice to end tenancy for cause dated January 5, 2022 (the "Notice"). The Notice sets out the following reasons:

- The tenant or person permitted on the property by the tenant has put the landlord's property at significant risk;
- The tenant or person permitted on the property by the tenant has caused extraordinary damage to the unit or property;
- The tenant has not done required repairs to the unit or property; and
- 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 states that the Tenant was given several letters in relation to cleaning up the yard. The Landlord provides a copy of an undated letter as a breach letter and this letter provides the Tenant with two weeks to clean up the property. The Landlord confirms that the letter does not set out any section of the tenancy agreement that was breached. The Landlord states that before serving the Notice the Landlord had a

meeting with the city about the state of the yard. The Landlord states that the city will issue fines to the Landlord if the yard is not remedied. The Landlord states that the city bylaw infraction included junk on both the Landlord's property and adjoining city property. The Landlord provides copies of remedial requests from the city dated January 12, 2020 with February 28, 2022 set as the date for completion of the remediation.

The Landlord states that the Tenant has lots of flammable materials in the yard such as tin cans, wood, fabric and plastic and that this is a fire risk to the property. The Landlord states that they do not know of any extraordinary damage and will be able to confirm such damage after they obtain possession. The Landlord states that the Tenant was required to remove all junk and to clean the yard but has only done a partial job of cleaning up the yard. The Landlord states that while they recently took photos of the job the Landlord was too busy to provide these photos as evidence.

The Tenant states that they do not understand the reasons for the Notice. The Tenant states that at move-in the yard was enclosed by a fence and that the city subsequently informed the Tenant and the Landlord that some of the enclosed property was on city land. The Tenant states that the bylaw officers showed the Tenant the property line and gave the Tenant advice on how to clean up. The Tenant states that all of the yard including the city area was mostly cleaned up in February 2022 and that it has since been all cleaned about a week ago. The Tenant states that the Landlord's shed sits on city land and that all the Tenants flammable articles have been removed from the shed. The Tenant states that they started the clean up by focussing on the city owned area and that this area was all cleaned by the end of February 2022. The Tenant states that bylaw officers came by the unit two weeks ago and informed the Tenant that they were satisfied with the job but that they were still concerned about the presence of the shed.

The Landlord states that they purchased the property with the fence already in place and that they did not know that some areas were city property. The Landlord states that

the area of the yard that is city property was cleaned by March 5, 2022 but that the rest of the yard remains uncleared. The Landlord states that the yard was the subject of city bylaw issues last year and that on June 11, 2021 the Tenant was given a one month notice to end the tenancy with an effective date of August 1, 2021. The Landlord has no evidence of any further action taken by the Landlord at that time. The Landlord states that they were not aware that the shed was on city property.

The Tenant states that the bylaw officers informed the Tenant that the Landlord was given a copy of a photo and other documents showing the property lines and that although they had tried to contact the Landlord several times, they received no response. The Tenant states that if the Landlord is subject to any fines at this point it would only be in relation to the shed. The Tenant states that they have done no damage to the unit or the property. The Landlord agrees that they were given photos of the property lines but cannot determine from that photo that the shed is on city land.

### Analysis

Section 47 of the Act provides that a landlord may end a tenancy by giving notice to end the tenancy if, inter alia, the following applies:

- the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk;
- the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;
- 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;
- the tenant has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

Based on the Landlord's evidence of no extraordinary damage being determined at the time of the Notice I find that the Landlord has not substantiated this reason for ending the tenancy. Based on the Landlord's evidence that the Tenant was given an undated letter for repairs without referencing any material term of the tenancy agreement I find that the Landlord did not provide notice to the Tenant of a breach of a any material term. The Landlord has therefore not substantiated that the tenancy should end for a breach of a material term.

The Landlord's evidence is that the Tenant did not complete cleaning the yard and that photos were recently taken of the state of the yard however the Landlord did not provide those photos as supporting evidence. For this reason, given the Tenant's evidence that the yard has been cleaned to the satisfaction of the city and considering that there is no evidence of any fines from the city to date, I find on a balance of probabilities that the Landlord has not substantiated that the yard remains unclean. Given the Tenant's evidence that the yard was recently fully cleaned, considering the time of year that the Tenant undertook the cleaning and as there is no evidence of any fines for failure to meet the February 28, 2022 deadline by the city, I find on a balance of probabilities that the Tenant did the required repairs to the yard within a reasonable time.

The Landlord gives evidence of a risk to the property by the presence of flammable materials. The Landlord describes those materials as tin cans, wood, fabric and plastic. The Tenant's evidence is that these materials were in the shed that is on city property and have been removed. The Landlord's supporting evidence of city requests to remediate the property, dated January 11, 2022, set out the required removal of all chattels, materials, rubbish or anything else that may be considered unsightly. There is no reference to any of these items being flammable or that the city considered that a fire risk was present, and I note that the Landlord was given a month for the latest removal of the items. This time period does not support that there was a significant risk to any property. There is no evidence to support that the imposition of fines will cause any risk to the property itself. There is no evidence that any fines have been issued. For these

reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenant put the Landlord's property at significant risk.

As none of the reasons set out on the Notice have been found to be valid, I find that the Notice is not valid to end the tenancy and I cancel the Notice. The tenancy continues however, given the undisputed evidence of a prior dispute over the state of the yard, I strongly caution the Tenant to maintain the yard going forward as required under the Act as a third such dispute may be to the Tenant's significant detriment. The Landlord's application is dismissed in its entirety and the tenancy continues. As the Tenant has been successful with this claim I find that the Tenant is entitled to recovery of the **\$100.00** filing fee and the Tenant may deduct this amount from future rent payable in full satisfaction of this claim. As only one Tenant is named on the Tenant's application, I make the monetary order in that Tenant's name.

#### Conclusion

The Notice is cancelled, and the tenancy continues. The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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

Dated: April 13, 2022

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Residential Tenancy Branch