



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with an application filed by the tenant pursuant the *Residential Tenancy Act* (the “Act”) for an order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55.

Both the landlord and the tenant attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged being served with the tenant’s application for dispute resolution and had no concerns with timely service of documents.

### Preliminary Issue

The tenant testified he did not receive the landlord’s evidence package. The landlord testified he served it the day before the hearing however, the method of service was not revealed. The landlord testified that he got stressed out by the tenant and his application seeking to dispute the notice to end tenancy that the landlord got physically ill with vertigo. He was overwhelmed by the process and that led to a delay in uploading the evidence to the Residential Tenancy Branch (uploaded the day before the hearing) and serving it to the tenant. The landlord acknowledges that he did not serve the tenant with his evidence at least seven days before the hearing even though he received the tenant’s application for dispute resolution around the end of December, 2021.

Pursuant to Rule 3.15 of the Residential Tenancy Branch Rules of Procedure, the respondent’s evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing. At the hearing, the respondent must be prepared to demonstrate to the satisfaction of the arbitrator that each applicant was served with all their evidence as required by the *Act* and these Rules of Procedure pursuant to Rule 3.16.

Rule 3 provides comprehensive rules for service and exchange of evidence. If a party does not comply with the timelines included in Rule 3, that party risks the evidence not being considered. I considered whether the acceptance of the late evidence would prejudice either party or result in a breach of the principles of natural justice and the right to a fair hearing.

I determined that if I were to accept the landlord's late evidence, the tenant would be denied the opportunity to prepare for and submit their case and rebuttal to it. This would be prejudicial against the tenant, and I ruled the landlord's late evidence would not be admitted pursuant to Rule 3.

#### Preliminary Issue

On March 6, 2022, the tenant sought to amend his application for dispute resolution by filing an amendment. The nature of the amendment was the addition of a monetary order. Residential Tenancy Branch Rules of Procedure, Rule 2.3 states that, if, in the course of the dispute resolution proceeding, the Arbitrator determines that it is appropriate to do so, the Arbitrator may sever or dismiss the unrelated disputes contained in a single application with or without leave to apply. I am exercising my discretion to dismiss the issue identified in the tenant's amendment with leave to reapply as this matter is not related to that primary issue of whether to uphold or cancel the notice to end tenancy. Leave to reapply is not an extension of any applicable time limit.

#### Issue(s) to be Decided

Should the landlord's 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

#### Background and Evidence

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

The landlord's documentary evidence was excluded at the commencement of the hearing for failure to exchange and upload within the timelines as set out under Rule 3.

The landlord gave the following testimony. The tenant has been living in the building for the past 15 to 19 years. Rent is currently just over \$600.00 per month. The landlord's parents were the original caretakers of the building, and the current landlord took over as caretaker when his parents passed away.

The landlord sent the tenant a 1 Month Notice to End Tenancy for Cause on December 14, 2021 by registered mail and provided the tracking number which is recorded on the cover page of this decision. A copy of the notice to end tenancy was provided as evidence by the tenant.

The reason for ending the tenancy states that

The tenant or a person permitted on the property by the tenant has:

- Significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
- Put the landlord's property at significant risk.

Under "details of cause", the landlord wrote:

*Bringing bed bugs in & creating overcost too many times. Interfering with landlord's decision.*

The landlord called a witness, TD to provide testimony. TD testified that he owns a pest control company that treats for bedbugs using heat treatment. Heat treatments cost much more than regular pest control, but it is more effective because heat can kill eggs as well as live bugs. 3 years ago, the witness was called to the tenant's unit by the landlord because the tenant complained of getting bites. No evidence of bedbugs was found, no shell casings, no fecal matter, and no blood spots. The witness didn't recommend a treatment, however the landlord asked him to go ahead, and heat treat the tenant's unit anyways. 2 years later, the tenant complained of being bitten again. No bugs were found but the landlord agreed to pay for another heat treatment.

In November 2021, a third complaint came, and the landlord got the tenant's unit heat treated a third time. This time, a couple of bedbugs were found on the tenant's computer chair which the witness recommended the tenant throw it away. This was the third time the witness came and treated the tenant's unit, and the November 21<sup>st</sup> visit was the only time bugs were found, and only on his chair. None were in the tenant's bedroom, in his mattress, on his couch or any other location.

On cross exam, the witness stated that he came to the tenant's unit twice in 2018 and bedbugs weren't eradicated, there would be a "massive infestation" when he came back in 2021. There was no infestation in 2021. The witness guarantees his work to eradicate bedbugs. He may have attended twice in 2018 due to the tenant's repeated complaints in 2018.

The landlord gave the following testimony. The witness attended twice in November 2018 and once in November 2021. The reason the landlord seeks to end the tenancy is because the tenant has caused the landlord to incur high costs and lots of stress for him for things that simply aren't there. The costs are "out of control". The landlord pays for the pest controller to investigate and to treat for bedbugs. The only evidence of bugs the tenant could produce is a pill bottle with a bug in it and one or two found on the tenant's computer chair. The landlord has no problem paying for treatments but questions why the landlord has to cover the costs when the tenant brings them in. This tenant has never contributed to the cost of heat treatments while others have done so voluntarily. The multiple complaints of bed bugs and subsequent treatments cause the landlord stress, as does preparing for the dispute resolution hearing when the tenant disputed the landlord's notice to end tenancy.

The tenant testified that in 2018, the bedbugs were brought in by a former tenant who was subsequently evicted by the landlord. That tenant was a prostitute whose clients brought in the bugs. The bugs migrated to the tenant's unit and both units were heat treated when the prostitute got evicted. The tenant never had bugs until the prostitute moved in and he has lived in the building for the past 19 years.

The tenant argues that it is the landlord's responsibility to eradicate the bugs when someone brings them into the building, not his. The high heat treatment used on the bugs has damaged some of his belongings. The tenant questions how the building is at risk by anything the tenant has done. The tenant's smoke detector was damaged by the heat treatment, and it took 3 weeks for the landlord to replace it. That is a greater risk to the building than the tenant's complaints of bedbugs.

The tenant acknowledges receiving the notice to end tenancy on December 21, 2021.

### Analysis

The landlord testified he sent the tenant the notice to end tenancy by registered mail on December 14, 2021. I deem the tenant served with it five days after service, on December 19, 2021 in accordance with sections 88 and 90 of the *Act*. The tenant filed an application to dispute the notice on December 21, 2021, within 10 days as required by section 47.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure state that the landlord bears the onus to prove the reasons for ending a tenancy when a tenant disputes a notice to end tenancy. The standard of proof is on a balance of probabilities.

In the notice to end tenancy, the reason for ending the tenancy states that The tenant or a person permitted on the property by the tenant has:

1. Significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. Seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
3. Put the landlord's property at significant risk.

Under "details of cause", the landlord wrote:

*Bringing bed bugs in & creating overcost too many times. Interfering with landlord's decision.*

Dealing with the first reason for ending the tenancy: a significant interference or unreasonable disturbance to another occupant or the landlord. I do not find the landlord has provided sufficient evidence of the tenant doing any such thing. A landlord is required under section 32 to maintain the residential property in a state of decoration that complies with health, safety and housing standards required by law and make it suitable for occupation by a tenant. An original complaint made by the tenant in 2018 followed by another in 2021 are not, in my opinion, significant or unreasonable. While I find it prudent that the landlord opted to have heat treatments done in 2018 despite not finding bedbugs in the tenant's unit, the tenant cannot be faulted to the landlord's choice to have the treatment done. Nor can the tenant be faulted to not offering to contribute to the cost of the treatment.

I find the landlord has failed in the second reason for ending the tenancy, as well. In the notice to end tenancy, under "details of cause", the landlord writes that the tenant was "*bringing bed bugs in*". I find the landlord has not provided sufficient evidence of this. In fact, the landlord's witness testified that in 2018, there was no evidence of bedbugs in the tenant's unit. The witness also found scant evidence of them in 2021 – just two on the tenant's computer chair which was tossed out. Conversely, the tenant claimed the bedbugs came into the building via the clients of the prostitute living next door. On a balance of probabilities, I find the landlord has failed to prove the tenant brought bedbugs in. Consequently, I do not find the tenant seriously jeopardized the health, safety or lawful right of another occupant.

As far as the landlord's health is concerned, I find the landlord has provided insufficient evidence to satisfy me that the tenant's obligation to report bedbugs has led to a serious jeopardization of the landlord's health or safety. As stated previously, a landlord is required under section 32 to maintain the residential property in a state of decoration that complies with health, safety and housing standards required by law and make it

suitable for occupation by a tenant. Dealing with a pest infestation is part and parcel of the occupation as a landlord or caretaker of a building. Preparing for and attending a dispute resolution hearing when a tenant disputes a notice to end tenancy is also part of a landlord's responsibilities. The stress and anxiety associated with doing so cannot be attributed to the tenant or his actions.

Lastly, the third reason for ending the tenancy was that the tenant put the landlord's property at significant risk. Once again, there is very little evidence to support this reason for ending the tenancy. The landlord provided no testimony regarding damage to the property from the tenant. While I suspect the pest controller's heat treatment to control the bedbugs may have caused some minor damage to the rental unit, the landlord did not provide me with any testimony regarding the tenant or his guests significantly damaging the property. I find this reason for ending the tenancy is also invalid.

I find the landlord has not proven the reasons for ending the tenancy as stated in the 1 Month Notice to End Tenancy for Cause. The notice to end tenancy is cancelled and of no further force or effect.

#### Conclusion

The notice to end tenancy issued on December 14, 2021 is cancelled and is of no further force or effect.

The tenancy shall continue until it is ended in accordance with the *Act*.

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: April 09, 2022

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Residential Tenancy Branch