



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding PETER WALL MANSION +  
ESTATES and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      Tenant:      **CNC, FFT**  
Landlord:      **OPC, FFL**

### **Introduction**

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. Cancellation of the Landlord's One Month Notice to End Tenancy for Cause (the "One Month Notice") pursuant to Sections 47 and 62 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

This hearing also with the Landlord's cross application pursuant to the Act for:

1. An Order of Possession for the One Month Notice pursuant to Section 55 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Landlord's Agents and the Tenant attended the hearing at the appointed date and time. Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, and make submissions.

Both parties were advised that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties testified that they were not recording this dispute resolution hearing.

Both parties acknowledged receipt of:

- the Landlord's One Month Notice served by posting on March 28, 2022. Deemed received on March 31, 2022;

- the Tenant's Notice of Dispute Resolution Proceeding package served by registered mail close to the end of April 2022, the Landlord confirmed receipt;
- the Landlord's Notice of Dispute Resolution Proceeding-OP package ("NoDRP-OP package") and evidence was served by Canada Post registered mail on May 25, 2022, the Canada Post Tracking Number is noted on the cover page of this decision. The Tenant confirmed receipt of the NoDRP-OP package, but not the Landlord's evidence. The NoDRP-OP package was deemed served on May 30, 2022.

Pursuant to Sections 88, 89 and 90 of the Act, I find that both parties were duly served with all the documents related to the hearing in accordance with the Act.

### Issues to be Decided

1. Is the Tenant entitled to cancellation of the Landlord's One Month Notice?
2. If the Tenant is unsuccessful, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to recovery of the application filing fee?
4. Is the Landlord entitled to recovery of the application filing fee?

### Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The parties confirmed that this tenancy began as a fixed term tenancy on June 1, 2020. The fixed term ended on May 30, 2021, then the tenancy continued on a month-to-month basis. Monthly rent is \$2,131.00 payable on the first day of each month. A security deposit of \$1,050.00 and a pet damage deposit of \$600.00 were collected at the start of the tenancy and are still held by the Landlord.

The One Month Notice stated the reason the Landlord was ending the tenancy was because the Tenant has put the landlord's property at significant risk; and, the tenant has failed to comply with a material term of the tenancy agreement, and has not corrected the situation within a reasonable time after the landlord gives written notice to do so. The effective date of the One Month Notice was April 30, 2022.

The Landlord's One Month Notice provided further details of the causes to end this tenancy as:

*Tenant has failed to remove garbages and dog droppings that are spread in the entire unit. Tenant was advise to do so on March 11, 2022, after an inspection done on March 14 nothing has been done.*

On March 11, 2022, during a fire safety inspection of the Tenant's rental unit, the Landlord said they first noticed the state of the Tenant's suite. The Landlord said they notified the Tenant that they would be doing another re-inspection of the suite on March 14, 2022. The Landlord said when they were there on March 14, 2022, they took pictures inside the Tenant's rental unit.

The Landlord maintained that the smells of urine and dog feces in the Tenant's rental unit were "*disgusting*". The Landlord said he had his co-manager with him, and they were worried about the possibility of '*bugs going into other suites*'. The Landlord did not state there were pest issues in other suites in the residential property. The Landlord stated they did not send a breach letter to the Tenant, instead they just served the One Month Notice on the Tenant.

The Tenant states there are no bugs in his suite, but he did confirm there was dog feces at his front door. The Tenant also said there is a large pile of recycling in his living room. He confirmed that it is all cardboard, dry and not soiled. It is pizza boxes and food boxes from the grocery store. The Tenant claimed that anytime he went down to the recycling, it was jam packed or missing, and the Tenant stated he did fall behind in his house cleaning because he was working a lot.

The Tenant has "pee pads" around the house for his dog to use, so he says he can smell urine in his rental unit. At the end of the day, he said he throws out the soiled pee pads and puts out new ones. The Tenant argues that the smell does not go outside of his home.

The Tenant was not with the Landlord during the March 14, 2022 re-inspection. He stated he did not provide permission to them to take photographs inside his rental unit. On March 25, 2022, the Tenant said another note was slipped under his door that the Landlord wanted to do another inspection on March 28, 2022. The Tenant declined having another inspection done, as, he stated, it was too many inspections, and they were only allowed one per month.

On March 28, 2022, the Tenant received the One Month Notice, and he applied for dispute resolution to cancel the notice.

The Landlord is seeking an Order of Possession for cause.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy were based.

Section 28(a) of the Act provides that a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy. The Landlord, during an inspection without the Tenant, took pictures inside the Tenant's rental unit. I find this is a breach of the Tenant's right to reasonable privacy, and the Landlord is ordered not to take pictures inside the Tenant's rental unit without the Tenant's explicit authorization.

### ***Landlord's notice: cause***

- 47** (1) *A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:*
- ...
- (d) *the tenant or a person permitted on the residential property by the tenant has*
- ...
- (iii) *put the landlord's property at significant risk;*
- ...
- (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;*
- ...
- (2) *A notice under this section must end the tenancy effective on a date that is*
- (a) *not earlier than one month after the date the notice is received, and*

- (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*
- (3) A notice under this section must comply with section 52 [form and content of notice to end tenancy].*
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.*

...

The Landlord's One Month Notice was deemed served on the Tenant on March 31, 2022. I find that the One Month Notice complied with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on April 6, 2022 which was within the 10 days after receiving the One Month Notice.

The Landlord alleges that due to the state of cleanliness of the Tenant's rental unit there is a possibility of bugs going to other suites in the residential property. The Tenant stated he does not have bugs in his rental unit. The Landlord did not provide evidence that surrounding residential units have pest infestations. I place little weight on the Landlord's uploaded photographic evidence. I do not find that the Landlord has proven on a balance of probabilities that the Tenant has put the Landlord's property at significant risk. The Landlord claims it is only a possibility, and not the reality which the legislation envisions. I find the Landlord has not proven cause to end the tenancy under Section 47(1)(d)(iii) of the Act.

RTB Policy Guideline #8 - Unconscionable and Material Terms states that a Landlord can end a tenancy agreement if a material term of that agreement has been breached. The Guideline states:

*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, 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.*

The Landlord testified that they did not issue a letter to the Tenant about his breaching a material term of the tenancy agreement. Instead, the Landlord stated that he was instructed to just serve the One Month Notice. The Tenant needed to be notified that he had breached a material term of his tenancy agreement, and he was to be given a reasonable deadline to have the problem fixed. I find the Landlord has not proven on a balance of probabilities that the Tenant breached a material term of the tenancy agreement. I cancel the Landlord's One Month Notice, and I dismiss the Landlord's application. The tenancy will continue until ended in accordance with the Act.

As the Tenant is successful in his claim, he is entitled to recovery of the application filing fee. The Tenant may, pursuant to Section 72(2)(a) of the Act, withhold \$100.00 from one month's rent due to the Landlord.

### Conclusion

The Tenant's application to dismiss the Landlord's One Month Notice is granted.

The Tenant may withhold \$100.00 from next month's rent to recover his application 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 Act.

Dated: August 10, 2022

---

Residential Tenancy Branch