



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      **CNC, MNRT**

### **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. An Order for the Landlord to pay back the Tenant for the cost of emergency repairs pursuant to Section 33 of the Act.

The hearing was conducted via teleconference. The Landlord, her Agent/Translator, 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.

The Landlord served the Tenant with the One Month Notice on May 25, 2022 by posting the notice on the Tenant's door. The Tenant confirms receipt of the One Month Notice on May 25, 2022. I find the One Month Notice was served on the Tenant on May 25, 2022 according to Sections 88(g) and 90(c) of the Act.

The Tenant testified that he served the Landlord with the Notice of Dispute Resolution Proceeding package and evidence on June 9, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail

receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I find that the Landlord was deemed served with the NoDRP package five days after mailing them on June 14, 2022 in accordance with Sections 89(1)(c) and 90(a) of 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 an Order for the Landlord to pay back the Tenant for the cost of emergency repairs?

### 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 Tenant noted that this periodic tenancy began on May 1, 2017. The Landlord purchased the property in September 2020 and the tenancy agreement continued with the new Landlord. The parties confirmed that the monthly rent is \$1,800.00 payable on the first day of each month. A security deposit of \$900.00 was collected at the start of the tenancy and is still held by the Landlord.

The One Month Notice dated March 22, 2022 stated the reason the Landlord was ending the tenancy was because the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, the Tenant has caused extraordinary damage to the unit or property; and the Tenant has assigned or sublet the rental until with the Landlord's written consent. The effective date of the One Month Notice was April 22, 2022.

The Landlord provided further details of the causes to end this tenancy as:

*The house inspection conducted by the certified house inspector [name] on Feb 15, 2022. In the report, the house inspector that there is unpleasant odour from mold/moisture/rotten organic/ or other items observed. There is sever safety concern.*

The Landlord's Agent testified that the One Month Notice was sent on the day the home was purchased. The Landlord's Agent says it is their intent to take back the property. She noted the house inspection has safety concerns. The Landlord's Agent states that the home smells unpleasant which could be the Tenant himself. The Landlord maintains that the smell is bad and because the Tenant is the only person and his girlfriend living in the home that they must be the cause. The Landlord argues that the Tenant is living with another girl who he says is his girlfriend.

The Tenant said the inspection was done in another language, but it is an older house built in 1938 with single pane windows and there is mould on the walls. The Tenant states there is no extraordinary damage.

The Tenant states his girlfriend stays over around three nights per week. When the Tenant initially rented the home from the previous owner, one term in the addendum to the tenancy agreement states, *"8 Mold Tenant acknowledges that the house was moldy before and the landlord is not responsible for any infection or disease or sickness caused by the mold in the house."*

On February 17, 2022, the Tenant experienced trouble with the main sewer line into the house. If he ran water upstairs, the water would overflow in the basement with sewage water. He has experienced these kinds of problems before with the previous Landlord. He said he contacted the Landlord multiple times, and she was busy with her children. He sent her a text message, and he sent her photos by email. The Tenant uploaded the reply from the Landlord which states:

*Yes you can fix it or ask someone els go fix it. You can pay for it first and we can see who should be responsible for that. If you want me to do it , yes I can. But I need to vacant the place and get it checked. Please let me know when you can vacant the place.*

*[Landlord]*

The Tenant contacted a plumbing/heating/air company and they agreed to do an emergency call after hours. They showed up and attempted to clear the clog on February 18, 2022. This emergency after hours call totalled \$187.95. Further work involved 1 hour drain cleaning with professional grade power snake, and an additional half hour of drain cleaning with professional grade power snake totalling \$325.48.

On February 19, 2022, a plumbing and water cleanup company came out to the rental unit and augered the sewer main. The company had to use cutters on the auger to remove tree roots. The company used a camera to inspect the lines, and they found multiple joints in the clay pipe showed signs of roots growing in the line. The plumbing and water cleanup company's invoice totalled \$465.15.

The Tenant forwarded the invoices totalling \$978.58 to the Landlord and claims reimbursement, but the Landlord has not reimbursed the Tenant for the emergency repairs to the damaged or blocked sewer pipes. The Tenant claims \$978.58 reimbursement for emergency repairs.

The Landlord stated she did not know the Tenant hired the most expensive companies to complete the emergency repairs; however, she ended by saying, "*I don't mind paying.*"

### 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 47 of the Act is the relevant part of the legislation for this matter. It states:

#### ***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*

...

(ii) *seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*

...

- (f) *the tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to a rental unit or residential property;*
  - ...
  - (i) *the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];*
  - ...
- (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.*
- ...

Although the One Month Notice was dated March 22, 2022, the Landlord's One Month Notice was served on May 25, 2022. Section 53 of the Act enables incorrect effective dates to automatically change. As the One Month Notice was served on May 25, 2022, then the effective date for the One Month Notice is corrected to June 30, 2022 pursuant to Section 53(2) of the Act. I find the One Month Notice complies with the form and content requirements of Section 52 of the Act. The Tenant applied for dispute resolution on May 26, 2022 within the ten days after the date the Tenant received the One Month Notice.

The Landlord's evidence does not support any of the reasons set out in the One Month Notice as causes to end the tenancy. I cancel the Landlord's One Month Notice and the tenancy will continue until ended in accordance with the Act.

Section 33 of the Act deals with emergency repairs. Emergency repairs are those repairs that are urgent, necessary for the health or safety of anyone or for the preservation or use of the residential property and are granted for repairing damaged or blocked water or sewer pipes or plumbing fixtures, among other things. I find that the plumbing issues the Tenant was experiencing on February 17 to 19, 2022 were urgent and necessary for the health and safety of the Tenant.

The Tenant contacted the Landlord when he discovered that sewage water was backing up into the basement of the rental property, and the Landlord instructed him to deal with the problem to get it fixed. Pursuant to Section 33(5) of the Act, it states that a landlord must reimburse a tenant for amounts paid for emergency repairs if the tenant claims reimbursement for those amounts from the landlord and gives the landlord a written account of the emergency repairs accompanied by a receipt for each amount claimed. I find that the Tenant did email the Landlord with the receipts for the repairs needed to be done to repair the damaged or blocked sewer pipes leaving the house. The Tenant also included that evidence in his uploaded evidence package. Those invoices totals were:

Date	Description	Amount
2022 02 18	2hr Drain Cleaning With Professional Grade Power Snake	\$179.00
	GST	\$8.95
2022 02 18	1 hour Drain Cleaning With Professional Grade Power Snake	\$249.99
	Additional 1/22hr Drain Cleaning With Professional Grade Power Snake	\$59.99
	GST	\$15.50
2022 02 19	Augered sewer main through basement cleanout to clear backup. Used cutters on auger to remove roots. Camera inspection found line clear through multiple joints in clay pipe showed signs of roots growing in.	\$443.00
	GST	\$22.15
	TOTAL:	\$978.58

I do not find that the amounts invoiced for the sewer main work to be unreasonable. I also do not find that the damage was caused by the actions or neglect of the Tenant. I find the Landlord is responsible to reimburse the Tenant for these emergency repairs.

Pursuant to Section 72(2)(a) of the Act, I order that the Tenant may deduct the amount owing, **\$978.58**, from the next rental payment, whether than be October 1, 2022's rent or November 1, 2022's rent.

Conclusion

The Tenant's application to cancel the One Month Notice is granted. The tenancy will continue until ended in accordance with the Act.

The Tenant may deduct the amount owing for the emergency repairs, **\$978.58**, from his next rental payment.

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: September 26, 2022

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Residential Tenancy Branch