



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Redbrick Properties Inc. and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On July 25, 2022, the tenant applied to:

- dispute a One Month Notice to End Tenancy for Cause, dated July 21, 2022 (the July One Month Notice); and
- recover the filing fee.

On August 23, 2022, the tenant applied to amend his application to:

- dispute a second One Month Notice to End Tenancy for Cause, dated August 19, 2022 (the One Month Notice).

The hearing was attended by the landlord, the tenant, and the tenant's advocate. Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

The landlord confirmed he received the tenant's Notice of Dispute Resolution Proceeding (NDRP) and evidence, but not the tenant's amendment form. The tenant testified he served a copy of the amendment form by hand to the building manager on August 23, 2022. Based on the tenant's affirmed testimony, I find the tenant served the amendment form by leaving a copy with an agent of the landlord, in accordance with section 89 of the Act, and I deem it received the same day.

The tenant confirmed receipt of the landlord's responsive evidence.

## Preliminary Matters

### *Naming of parties*

As the landlord confirmed their legal business name is different from that named in the dispute, with the agreement of the parties I have used the landlord's legal business name on the cover page of the decision.

### *Withdrawal of July One Month Notice*

As the landlord confirmed he wished to withdraw the July One Month Notice, I cancel the July One Month Notice, dated July 21, 2022.

### *Amendment of application*

I accept the tenant's amendment to dispute the second One Month Notice served on him, which is dated August 19, 2022. I find this does not prejudice the landlord, as the landlord has submitted evidence relating to the reasons and details in the Notice.

## Issues to be Decided

- 1) Is the tenant entitled to an order to cancel the One Month Notice?
- 2) If not, is the landlord entitled to an order of possession?
- 3) Is the tenant entitled to the filing fee?

## Background and Evidence

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties agreed on the following particulars regarding the tenancy. It began February 1, 2015; rent is \$1,395.00, due on the first of the month, and the tenants paid a security deposit, of \$585.50, which the landlord still holds.

The landlord testified that the One Month Notice was served on the tenants by email on August 19, 2022, to their email addresses agreed upon for service. The tenant confirmed he received the One Month Notice on August 19, 2022.

A copy of the One Month Notice was submitted as evidence. It is signed and dated August 19, 2022 by the landlord, gives the address of the rental unit, states the effective date of September 30, 2022, states the grounds for ending the tenancy, and is in the approved form.

The reasons indicated for the One Month Notice are:

- the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk; 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 Details of the Events section refers to three issues: the tenant not having tenant insurance as required by the tenancy agreement, the tenant smoking in the rental unit though it is prohibited, and the tenant producing noise and causing disturbances.

The landlord testified that the tenancy agreement requires tenants to have tenant insurance, and that tenants have been given reminders about it for 3 years. The landlord testified that in a notice dated July 18, 2022, he provided notice to tenants that they must provide proof of insurance, and that at that time learned that the tenant had never had insurance during the tenancy.

The landlord testified that his insurer requires that the landlord's tenants have insurance, and that the tenant's lack of coverage put the landlord's property and insurance policy at risk.

The tenant testified he had not received any notice regarding insurance until the July 18, 2022 notice, and that once he received it, he promptly obtained the required insurance.

Submitted as evidence is a document dated July 22, 2022, confirming the tenant is insured for personal and premises liability until July 22, 2023, unless the insurance is cancelled.

The landlord testified that the tenancy agreement states that tenants may not smoke on the property or in the rental unit, and that the tenant received a breach letter for smoking in January 2019. The breach letter is submitted as evidence, as is a warning letter dated November 12, 2019.

The landlord testified that in response to complaints, he inspected the tenant's rental unit on July 8, 2022, finding it smelled strongly of smoke. The landlord testified that the finding was documented with a breach letter, though the letter is not in evidence.

The tenant testified that neither he nor his partner smoke, but he often leaves his balcony door open, and there are always people below, smoking outside.

An undated breach letter referencing a late-night incident on June 11, 2020 is submitted as evidence. It states that the tenant caused a disturbance and police were summoned, and refers to the tenant repeatedly causing noise disturbances.

The landlord testified that section 17 of the tenancy agreement sets out how tenants must conduct themselves to not disturb others on the property.

The landlord referred me to written complaints in evidence, in which other tenants describe being disturbed by the subject tenant during incidents in 2019 and 2020.

The landlord testified that three sets of tenants in units surrounding the subject tenant have moved out due to the tenant smoking and being noisy.

The tenant's advocate submitted that rent in the municipality is significantly higher than what the tenant pays, due to the length of his tenancy, and that the One Month Notice was served by the landlord so he could increase the rent.

The tenant's advocate questioned the landlord's assertions that particular terms of the tenancy agreement were material terms.

### Analysis

Based on the parties' testimony, I find the landlord served the One Month Notice on the tenant in person on August 19, 2022.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states the effective date, states the grounds for ending the tenancy, and is in the approved form.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives the Notice. As the Notice was served

August 19, 2022 and the tenant amended his application on August 23, 2022 to dispute it, I find the tenant met the 10-day deadline.

Rule 6.6 states:

**6.6 The standard of proof and onus of proof**

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. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the onus is on the landlord to prove the reasons they wish to end the tenancy as indicated on the One Month Notice, those being:

- the tenant or a person permitted on the residential property by the tenant has put the landlord's property at significant risk; and
- breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

*Significant risk*

The landlord has provided testimony and supporting evidence demonstrating that the tenant had not obtained tenant insurance as required by the tenancy agreement. The landlord's position is that as his insurer requires tenants to have tenant insurance, the tenant's failure to obtain insurance put the landlord's property at significant risk.

The tenant testified that he had been previously unaware of the insurance requirement, and promptly obtained insurance, having received the landlord's July 2022 notice indicating that proof of tenant insurance was required.

Submitted as evidence is a copy of confirmation of the tenant's insurance coverage, as of July 22, 2022.

In *Senft v. Society for Christian Care of the Elderly*, 2022 BCSC 744, the justice found that "arbitrators must keep the protective purpose of the RTA in mind when construing

the meaning of a provision of the [Act],” and that an analysis of a dispute must consider the “post-notice” conduct of a tenant when deciding whether an end to tenancy is justified or necessary in the context of the protective purposes of the Act.

As the risk identified by the landlord was that the tenant did not have the tenants insurance required by the tenancy agreement and the landlord’s insurer, and the parties agree that the tenant now has insurance, I do not find it reasonable to end the tenancy for this reason because the issue has been resolved.

*Breach of a material term*

The landlord has testified that the tenant has breached material terms of the tenancy by not having tenant insurance, by smoking, and by being noisy; breach letters from 2019 and 2020 are submitted in support, with the exception of a breach letter for smoking which the landlord testified was issued following a July 2022 inspection.

Though the tenant has allegedly been smoking and making noise for numerous years, the landlord has not proven that he has recently provided breach letters that would substantiate his reasons for issuing the Notice, as required by Policy Guideline 8.

[Policy Guideline 8. Unconscionable and Material Terms](#) provides that a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement. Guideline 8 also states that it falls to the person relying on the term to present evidence and argument supporting the proposition that the term is a material term.

Essentially, simply stating that a term is material does not make it so.

The landlord’s testimony and submitted breach letters have referred to sections of the tenancy agreement as material terms, but the landlord has not supported those assertions with reasoning demonstrating the terms are material. Additionally, the landlord has not demonstrated that the parties agree on the importance of the terms the landlord has referred to as material.

For the foregoing reasons, I find on a balance of probabilities that the landlord has failed to prove the reasons for the One Month Notice.

Therefore, I cancel the One Month Notice, and find the landlord is not entitled to an order of possession in accordance with section 55 of the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in his application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

### Conclusion

The tenant's application is granted; the tenancy will 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: October 14, 2022

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Residential Tenancy Branch