



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HAROB HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, LRE, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant June 30, 2022 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated June 20, 2022 (the “Notice”)
- To suspend or set conditions on the Landlord's right to enter the rental unit
- For reimbursement for the filing fee

The Tenant appeared at the hearing. A.L. appeared at the hearing for the Landlord. I explained the hearing process to the parties. I told the parties they are not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

A.L. confirmed the correct name of the Landlord which is reflected in the style of cause.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the Notice and dismiss the request to suspend or set conditions on the Landlord's right to enter the rental unit because it is not sufficiently related to the dispute of the Notice. The request to suspend or set conditions on the Landlord's right to enter the rental unit is dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

A.L. confirmed receipt of the hearing package. A.L. testified that they did not receive the Tenant's evidence. A.L. agreed there is no issue with admissibility of the tenancy agreement and Notice. The issue is 11 photos submitted by the Tenant. The Tenant testified that they tried to serve the photos on the Landlord two days prior to the hearing but were unable to. I found the Tenant did not comply with the Rules in relation to service of the 11 photos. I heard the parties on whether the photos should be admitted or excluded pursuant to rule 3.17 of the Rules. The Tenant sought admission of the photos and A.L. sought exclusion. I excluded the photos because I found it would be unfair to consider them when A.L. had not seen them and could not address them.

The Tenant confirmed receipt of the Landlord's evidence and there was no issue with the timing of service.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the admissible evidence provided. I will only refer to the evidence I find relevant in this decision.

#### Issues to be Decided

1. Should the Notice be cancelled?
2. Is the Tenant entitled to reimbursement for the filing fee?

#### Background and Evidence

A written tenancy agreement was submitted, and the parties agreed it is accurate. The tenancy started February 01, 2014. Rent is due on or before the first day of each month.

The Notice was submitted. The Notice is addressed to the Tenant and refers to the rental unit. The Notice is signed and dated by A.L. The effective date of the Notice is July 31, 2022. The grounds for the Notice are breach of a material term of the tenancy agreement. The Details of Cause section states that the Tenant has been given multiple chances to reduce excessive combustible materials in the rental unit.

A Proof of Service in evidence states the Notice was served on the Tenant in person June 21, 2022. The Tenant testified that they received the Notice in person June 20, 2022.

A.L. testified as follows. The Notice was issued due to the amount of items in the rental unit. The amount of items in the rental unit has been an issue since 2019, when the fire department was involved. The fire department has not been involved since 2019 because they left it to the Landlord to monitor the issue. The Tenant has been given multiple notices about the issue. The Tenant is in breach of section 20 of the tenancy agreement. An agent for the Landlord was last in the rental unit one week prior to the hearing when the Landlord's photos were taken. The photos show the rental unit looks the same as it did in 2019. There are too many belongings in the rental unit, and they are blocking the radiator and heater.

The Landlord submitted the following documentary evidence:

- Notice of Violation from March 2019
- A breach letter dated May 29, 2019, along with an Order from the City requiring the Tenant to reduce the amount of combustibles as well as clean and maintain means of egress from the floor area
- A breach letter dated June 01, 2022
- Photos of the rental unit

The Tenant testified as follows. In June of 2019, the fire department attended the rental unit, and the Tenant passed their inspection; however, the Landlord has not included this in their materials. In relation to section 20 of the tenancy agreement, the Tenant's personal items are stored in a safe condition and in proper storage areas. The Tenant does not have flammable items, chemicals or gas in their unit and the items they do have do not present a fire hazard. The Tenant's belongings are organized. The Tenant has reduced the number of items in the rental unit since 2019. All doors and windows can be opened fully. All exits are clear and free of obstruction. A.L. is harassing the Tenant and interfering with the Tenant and their belongings. A.L. never told the Tenant there was an issue when A.L. was in the unit recently. The Tenant is not breaching section 20 of the tenancy agreement.

The Tenant submitted the tenancy agreement, Notice and service documents.

## Analysis

The Notice was issued pursuant to section 47 of the *Act* and the following subsection:

47 (1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(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...

RTB Policy Guideline 08 addresses ending a tenancy for breach of a material term and states in part:

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 Tenant had 10 days from receipt of the Notice to dispute it pursuant to section 47(4) of the *Act*. I find the Notice was served, and received by the Tenant, June 21, 2022, based on the Proof of Service. The Application was filed June 30, 2022, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

The issue here is whether the Tenant has breached section 20 of the tenancy agreement which states:

*STORAGE. All property of the tenant kept on the residential property must be kept in safe condition in proper storage areas and is at the tenant's risk for loss, theft, or damage from any cause whatsoever. Hazardous or dangerous items must not be brought onto or kept on or in the residential property or rental unit. It is a material term of this Agreement that items stored inside the rental unit must be limited in type and quantity so as not to present a potential fire or health hazard, or to impede access to, egress from or normal movement within any area of the rental unit.*

Here, the issue is the amount of belongings in the rental unit. I decline to rely on the documentary evidence from 2019 because I do not find it compelling. The issue is not the state of the rental unit in 2019, the issue is the state now. Further, the Landlord did not provide compelling evidence showing the rental unit looks the same now as it did in 2019 when the Notice of Violation and Order were issued.

The documentary evidence to support the Landlord's position is the breach letter dated June 01, 2022, and the photos taken around November 08, 2022.

I find the relevant portion of section 20 of the tenancy agreement is a material term because it states that it is a material term.

I find the Landlord provided the Tenant a breach letter in accordance with RTB Policy Guideline 08 being the June 01, 2022 breach letter which meets the requirements in RTB Policy Guideline 08.

I accept that the Tenant has breached section 20 of the tenancy agreement. Section 20 of the tenancy agreement clearly addresses the quantity of items stored in the rental unit. I accept based on the Landlord's photos that the quantity of items stored in the rental unit is excessive. I accept that the quantity of items in the rental unit does present a potential fire or health hazard and does impede access and normal movement within the rental unit. The items stored in the rental unit include cardboard boxes, piles of blankets and piles of clothing, all of which are fuel for a fire if one was to start. The excessive amount of boxes, blankets and clothing, along with the excessive amount of other items, is what creates a hazard. Further, the rental unit is so full of items that

there are only narrow walkways around it which does impede access and normal movement.

I find the Landlord has proven the Tenant has failed to comply with section 20 of the tenancy agreement and has not corrected the situation within a reasonable period after the June 01, 2022 breach letter. I find the Landlord had grounds to issue the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act* in form and content as required by section 47(3) of the *Act*.

Section 55(1) of the *Act* states:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

- (a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and
- (b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

I have upheld the Notice and therefore dismiss the Tenant's dispute of the Notice without leave to re-apply. I have found the Notice complies with section 52 of the *Act*. The Landlord is entitled to an Order of Possession pursuant to section 55(1) of the *Act*. A.L. sought an Order of Possession effective at the end of December and therefore is issued an Order of Possession effective at 1:00 p.m. on December 31, 2022.

Given the Tenant has not been successful, I decline to award the Tenant reimbursement for the filing fee and this request is dismissed without leave to re-apply.

### Conclusion

The Landlord is issued an Order of Possession effective at 1:00 p.m. on December 31, 2022. This Order must be served on the Tenant. If the Tenant does not comply with the Order, it may be filed in the Supreme 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: November 21, 2022

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Residential Tenancy Branch