



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing

A matter regarding RA REALTY ALLIANCE INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

On January 20, 2023, the Tenant filed an Application for Dispute Resolution under the *Residential Tenancy Act* (“the *Act*”) to cancel a One-Month Notice to End Tenancy for Cause, (the “Notice”) dated January 17, 2023, and for an order for the Landlord to comply with the *Act*. The matter was set for a conference call.

The Landlord and the Landlord’s Agent (the “Landlord”) as well as the Tenant and their Advocate (the “Tenant”) attended the hearing and were each affirmed to be truthful in their testimony. The Landlord and Tenant were provided with the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they exchanged the documentary evidence that I have before me.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure requires the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Preliminary Matter – *Related Issues*

I have reviewed the Tenant's application, and I note that they have applied to cancel a Notice to end tenancy as well as another issue. I find that this other issue is not related to the Tenant's request to cancel the Notice. As this other matter does not relate directly to a possible end of the tenancy, I apply section 2.3 of the Residential Tenancy Branches Rules of Procedure, which states:

**2.3 Related issues**

Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I explained to the parties, at the outset of the hearing, that I am dismissing with leave to reapply the Tenant's claim for an order for the Landlord to comply with the *Act*.

I will proceed with this hearing on the Tenant's remaining claim before me, to cancel the Notice.

Preliminary Matter – *Landlord's Agent Conduct*

During the hearing, the Landlord's Agent was cautioned regarding personal conduct towards this Arbitrator. The Landlord was advised of the expected appropriate conduct during these proceedings.

When this Arbitrator attempted to deliver their final decision, verbally, for this case, the Landlord's Agent interrupted by speaking loudly over top of this Arbitrator, attempting to reargue the case and express dissatisfaction with the decision rendered. The Landlord's Agent was asked to stop making submission, as the decision had already been rendered, the Landlord's Agent refused and continued speaking loudly over top of this Arbitrator. The phone line for the Landlord's Agent was muted to regain order in these proceedings. The Landlord, who had also called in to these proceedings, from a different phone line, remain unmuted throughout these proceedings.

This Arbitrator provided all parties with the available next steps, including Review Consideration, Judicial Review, and the Residential Tenancy Branch Contact information.

This Arbitrator ended these proceedings by repeating their final decision on the application and disconnecting all parties from these proceedings.

### Issues to be Decided

- Should the Notice dated January 13, 2023, be cancelled?
- If not, is the Landlord entitled to an order of possession?

### Background and Evidence

While I have turned my mind to all of the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here.

The parties testified that the tenancy began on September 30, 2020, that rent in the amount of \$2,500.00 is due on the first of each month and that the Landlord is holding a \$1,000.00 security deposit for this tenancy. Both parties provided a copy of the tenancy agreement into documentary evidence.

The Landlord testified that they had served the Notice to End tenancy to the Tenant by email on January 13, 2023, indicating that the Tenant was required to vacate the rental unit as of February 28, 2023. Both parties provided a copy of the Notice into documentary evidence.

The reason checked off by the Landlord within the Notice is as follows:

- *Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written Notice to do so*

The Notice informed the Tenant of the right to dispute the Notice within 10 days after receiving it.

The Landlord testified that they were ending the Tenant's tenancy due to repeated strata parking violations and the Tenant's refusal to pay the strata parking fines.

The Landlord was asked to present the term in their tenancy agreement that detailed the parking requirements on the rental property. The Landlord testified that the terms regarding parking were contained in the bylaws set out in the Strata Form K. The

Landlord confirmed that they did not submit a copy of the strata form K to these proceedings.

The Landlord was asked to present the warning letter they issued to the Tenant regarding the material term breach, the Landlord submitted that they had continually communicated with the Tenant, requesting payment of the parking fines but that the Tenant had refused to make the payments. The Landlord submitted 11 emails and six letters from the strata into documentary evidence.

The Landlord testified that their email dated January 9, 2023, was their written warning to the Tenant of the breach of the material parking terms for this tenancy. The Landlord confirmed that they did not indicate in the January 9, 2023, letter that any further breach would result in a Notice to end the tenancy.

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Pursuant to the deeming provisions set out in section 44 of the *Residential Tenancy Regulations*, I find that the Tenant was deemed to have received the Notice on January 16, 2023, three days after it was emailed by the Landlord. Pursuant to section 47 of the *Act*, the Tenant had ten days to dispute the Notice. Therefore, I find the Tenant had until January 26, 2023, to file their application to dispute the Notice. I have reviewed the Tenant's application and note that they filed their application on January 20, 2023, within the statutory time limit.

The Landlord has indicated on their Notice that they are ending the tenancy due to a breach of a material term of the tenancy by the Tenant. Residential Tenancy Branch Policy Guide #8 Unconscionable and Material Terms states the following regarding material terms:

#### **“Material Terms**

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.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

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.”

In this case, the Landlord has claimed that the parking provisions set out in the strata form K, are material terms of this tenancy and that the Tenant’s actions of receiving multiple parking violations with corresponding, combined with the Tenant’s refusal to pay those fees, constituted a breach of a material term of this tenancy.

I have reviewed all of the testimony and documentary evidence submitted by the parties in this case and I find that the Landlord has failed to submit a copy of the strata form K to these proceedings. As I am not able to review this document, I am unable to confirm if the parking bylaws section of this document constituted a material term of this tenancy. Therefore, in the absence of the Strata Form K, I find that there is insufficient evidence before me to show that strata parking bylaws were a material term under this tenancy agreement.

Additionally, I have reviewed all of the correspondence between these parties, submitted into evidence, and I find that none of these documents contain a written Material Term Breach warning as required under the *Act*. Specifically, I find that none of these emails indicated that the Landlord would end the tenancy's if the breach continued.

Finally, in order to end a tenancy due to a breach of a material term, the landlord must prove that the breach continue or happened again after the written warning letter was issued.

I have reviewing the totality of the Landlord's submissions, and I find that even if the parking bylaws had been a material term, which has not been proven, and even if the Landlord had communicated their intent to end the tenancy for continued breach, which also has not been proven, there is no evidence before me to show that the Tenant received another strata parking violation between the Landlord's January 9, 2023, email and January 13, 2023, Notice to end tenancy.

For these reasons, I find that the Landlord has not proven cause sufficient to terminate the tenancy for the reason given on the Notice they issued. Therefore, I grant the Tenant's application to cancel the Notice dated January 13, 2023, and I find the Notice has no force or effect. This tenancy will continue until legally ended in accordance with the *Act*.

Conclusion

The Tenants' application to cancel the Notice dated January 13, 2023, is granted. The tenancy will continue until legally 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: March 1, 2023

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Residential Tenancy Branch