



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding WANKE DEVELOPMENTS and  
[tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC, OLC, FFT

### Introduction

This hearing convened as a result of two applications filed by the Tenant. In the Tenant's Application, filed on March 8, 2023, she sought the following relief:

- an Order canceling a "10 Day Notice of Default" issued February 28, 2023;
- an Order that the Landlord comply with the *Residential Tenancy Act*, the *Residential Tenancy Regulation*, and/or the residential tenancy agreement; and
- recovery of the filing fee.

In the Tenant's Application, filed on April 7, 2023, the Tenant sought an Order canceling a 1 Month Notice to End Tenancy for Cause issued on March 24, 2023 (the "1 Month Notice") as well as recovery of the filing fee.

The hearing of the applications was scheduled for 11:00 a.m. on May 23, 2023. The Tenant called in on her own behalf. The Landlord was represented by the owner, E.W. and the Property Management Assistant, D.F. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties were cautioned that private recordings of the hearing were not permitted pursuant to *Rule 6.11* of the *Residential Tenancy Branch Rules*. Both parties confirmed their understanding of this requirement and further confirmed they were not making recordings of the hearing.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have

reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

As noted, in the Tenant's first application filed on March 8, 2023 she indicated she sought an order canceling a 1 Month Notice, yet the only document included in that application was a letter from the Landlord dated February 28, 2023 titled "10 Day Notice of Default". This is not a standard form notice to end tenancy but rather a warning letter sent by the Landlord setting out her concerns with the condition in which the rental unit was kept by the Tenant. Section 52 of the *Act* provides that to be enforceable a notice to end tenancy which is issued by a landlord must be in the approved form. This document is not in the approved form and therefore is not enforceable.

Conversely, the Tenant's Application filed on April 7, 2023 deals with a 1 Month Notice which is in the approved form; as such, I will only address the validity of the 1 Month Notice.

### Issues to be Decided

1. Should the 1 Month Notice be cancelled?
2. Should the Landlord be ordered to comply with the *Act*, the *Regulations*, and/or the tenancy agreement?
3. Should the Tenant recover the filing fee?

### Background and Evidence

*Residential Tenancy Branch Rules of Procedure—Rule 6.6* provides that when a tenant applies to cancel a notice to end tenancy the landlord must present their evidence first as it is the landlord who bears the burden of proving (on a balance of probabilities) the reasons for ending the tenancy. Consequently, even though the Tenant applied for dispute resolution first/and is the Applicant, the Landlord presented their evidence first.

Documentary evidence submitted by both parties indicated the Landlord wished to end the tenancy as a result of the Tenant's mushroom growing business.

The Landlord testified that although the tenancy began September 1, 2011 the parties signed a new tenancy agreement November 1, 2015. The Landlord stated that this agreement was needed to ensure that the Tenant's responsibilities were clearly set out, including that there was to be no business activity at the rental property.

The Landlord claimed that the Tenant was not operating a business in 2015 but that "a couple of years ago" she found out the Tenant was operating a mushroom growing business in a shed outside. She testified that on November 23, 2022 an inspection occurred at the rental unit at which time it was discovered that the Tenant was growing mushrooms *inside* the residence causing excessive humidity and condensation. The Landlord also claimed that the Tenant was storing mushrooms, vermiculate, and propane tanks *inside* the rental unit such that the Tenant was putting the property at risk.

The Landlord claimed that the inspection was not brought to her attention in a timely fashion but when the Landlord found out she issued the "10 Day Notice of Default" on February 28, 2023. At this time the Landlord sent a detailed letter to the Tenant setting out what the Tenant needed to do to remedy the situation.

The Landlord then inspected the rental unit on March 23, 2023. At that time the Landlord confirmed the Tenant had not taken any steps to correct the situation. The Landlord also claims that during this inspection she found out that the Tenant was smoking inside the residence. At that time the Landlord issued the 1 Month Notice. She confirmed that she sent it to the Tenant via registered mail.

The Landlord stated that to her knowledge the Tenant has business insurance.

In terms of the Landlord's concerns the Landlord stated that she believes the Tenant is putting the building at risk by:

- storing vermiculite, propane tanks and cook tops inside the residence;
- having electrical wires "running everywhere"; and
- storing buckets in the carport with flammable materials.

In terms of the Tenant's argument that the Landlord accepted her business, the Landlord stated that the Tenant stated that she was growing mushrooms in a shed

outside but now she is doing so inside and putting the property at risk. Further, the stated that she is very concerned that Tenant is smoking in the rental building.

The Landlord also stated that the Tenant has made several modifications to the rental property without the Landlord's consent. In this respect the Landlord acknowledged that they didn't do a move in inspection, however, she says she has been doing regular inspections and it is clear that the Tenant was the one who made those modifications. In terms of the problematic modifications, the Landlord stated the Tenant has:

- erected a Styrofoam enclosure;
- put holes in the siding creating risk of water penetration;
- attached a wood structure to the exterior of the door where there are dangling electrical cords;
- removed vinyl siding and installed cameras all over the building; and,
- stored piles of junk, including a pile of fertilizer and pallets.

The Landlord claimed that a bylaw enforcement officer attended and issued a warning about these items. The Tenant claimed that she attended to this, yet the photos suggest she has not attended to this.

In response the Tenant testified as follows.

The Tenant stated that she does not grow mushrooms in the house and only grows them in the shed. She confirmed she is aware that it is inadvisable to grow them inside a residence due to humidity and condensation issues. She stated has 300 kits in the shed which she grows for restaurants.

In terms of the cooktops, the Tenant stated that they are outside the residence and they are used to sterilize the mushroom media. In terms of the Styrofoam structure, the Tenant stated that it is an enclosure for drying the mushrooms and has Styrofoam insulation on the outside, but is made of wood.

The Tenant confirmed that she has business insurance and a business license.

The Tenant stated that she installed the wooden awning years ago, possibly in 2014 such that it has been there for many years.

In terms of the Landlords' request to clean up the yard, the Tenant stated that she was only given one days notice for the inspection. The Tenant claimed that the pile she called "fertilizer" was in fact compost from the mushrooms which she gives to gardeners in the area. The Tenant also stated that the pallet structure was there when she first arrived. She also stated that the pile goes up and down.

The Tenant claimed that the Landlord knew about her mushroom business as early as 2020 and that nothing has changed and it is the same as it was then.

The Tenant stated that to preserve her tenancy she would be prepared to move all the business related items from the home, remove the wooden awning as well as the Styrofoam drying structure. The Tenant also stated that she would remove the pallet pile and ensure the mushroom compost is taken from the property regularly to improve the way the property looks.

The Tenant also stated that she does not smoke but one of her friends did and when she realized he was she asked him to leave the residence.

In reply the Landlord stated that the mushroom business is not the same as it was in 2020, rather, there are more things being stored in the residence now that the business has grown tremendously.

### Analysis

Ending a tenancy is a significant request. A Landlord may end a tenancy provided they do so in accordance with the *Residential Tenancy Act*. Section 47 of the *Act* allows a Landlord to end a tenancy for cause and reads as follows:

**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;
- (e)the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - (i)has caused or is likely to cause damage to the landlord's property,
  - ...
- (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;

(g)the tenant does not repair damage to the rental unit or other residential property, as required under section 32 (3) *[obligations to repair and maintain]*, within a reasonable time;

(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;

...

After considering the testimony and evidence of the parties and a balance of probabilities I find the Landlord has failed to prove the reasons for issuing the Notice.

The Landlord alleges that it was a material term of the tenancy agreement that the Tenant not operate a business from the rental property.

*Residential Tenancy Branch Policy Guideline 22: Termination or Restriction of a Service or Facility* defines material term as follows:

**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. Even if a service or facility is not essential to the tenant's use of the rental unit as living accommodation, provision of that service or facility may be a material term of the tenancy agreement. When considering if a term is a material term and goes to the root of the agreement, an arbitrator will consider the facts and circumstances surrounding the creation of the tenancy agreement. It is entirely possible that the same term may be material in one agreement and not material in another.

I am not satisfied it was a material term of this tenancy that the Tenant not operate a business from the rental unit. While the tenancy agreement provided the Tenant was not permitted to operate a business on the rental property, I am satisfied the Landlord agreed to the Tenant's request that she be permitted to grow mushrooms in the shed. The evidence confirms that this has been going on for some time and it is not appropriate for the Landlord to allow this to occur only to later attempt to rely on the strict terms of the tenancy agreement in an attempt to end the tenancy. On balance, I find that the Landlord gave her consent to the Tenant to operate a mushroom growing business on the rental property. It is likely this business has grown beyond what the parties originally intended, however I am confident the tenancy can continue with some clearer boundaries around what is acceptable and what is not.

I am also not satisfied the Tenant's mushroom business has put the Landlord's property at *significant* risk. I accept the Tenant's testimony that she only grows mushrooms in

the outdoor shed and does not grow them indoors. I also accept her assurance that she will move all items related to her mushroom business (such as mushroom media, vermiculite, containers, propane tanks, etc.) from the residence to the shed and that she will restrict her business activities to the shed.

The Landlord bears the burden of proving the Tenant is engaged in illegal activity. I was not provided any submissions or testimony from the Landlord to support a finding that the Tenant is engaged in any illegal activity.

The Landlord also alleged the Tenant smokes in the rental home. The Tenant denies smoking and stated that she had a guest who smoked, and that when she discovered this, she asked the friend to leave. Without evidence to corroborate the Landlord's allegation that the Tenant smokes in the rental unit, I am unable to prefer her testimony over the Tenant's.

The Landlord also alleged the Tenant has caused *extraordinary* damage to the rental unit. The photos submitted by the Landlord show some alterations and some unsightly buildings and materials outside. Again, while unsightly, I am not satisfied these items represent *extraordinary damage* warranting ending this tenancy.

I therefore grant the Tenant's request to cancel the Notice.

The Tenant confirmed during the hearing that she would ensure that her mushroom business, as well as all related items, were removed from the residential home and confined to the shed. She further confirmed she would ensure the mushroom compost was regularly taken from the property and not allowed to accumulate. She also confirmed she would remove the pallets to improve the appearance of the property. Finally, the Tenant agreed to remove the awning and the Styrofoam structure which she constructed without the express consent of the Landlord.

The Tenant's request for an Order that the Landlord comply with the residential tenancy agreement is granted as it relates to the Landlord's express consent that the Tenant is permitted to operate a mushroom growing business from the shed on the rental property.

I find that it is a material term of the parties' agreement that the Tenant's mushroom growing business is confined to the shed and that she does not store business related

items in the residential home, and that she does not allow the accumulation of mushroom manure or pallets on the property.

Pursuant to section 62(3) of the *Act*, I Order the Tenant to remove the awning and drying shed within 30 days of the date of this Decision.

Should the Tenant fail to follow through on the above, the Landlord may issue a further 1 Month Notice to End Tenancy for Cause.

### Conclusion

The Tenant's request for an Order canceling the 1 Month Notice is granted. The tenancy shall continue until ended in accordance with the *Act*.

The Tenant's request that the Landlord comply with the tenancy agreement is granted as it relates to the Landlord's consent to the Tenant operating a mushroom growing business from the shed. The Tenant must ensure this business does not occur in the residential home, and that she does not store business items in the home, nor allow the accumulation of mushroom manure or pallets on the property.

The Tenant must remove the awning and drying shed within 30 days of the date of this Decision.

The Tenant is entitled to recover the \$100.00 filing fee paid for both her applications. She may reduce her next months' rent by \$200.00.

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: June 14, 2023

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Residential Tenancy Branch