



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding DOLE ENTERPRISES LTD  
and [tenant name suppressed to protect privacy]

## DECISION

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking an order cancelling a One Month Notice to End Tenancy For Cause.

The tenant and an agent for the landlord company attended the hearing, and each gave affirmed testimony. The parties were given the opportunity to question each other and to give submissions.

The parties agree that all evidence has been exchanged, all of which has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

Has the landlord established that the One Month Notice to End Tenancy For Cause dated April 26, 2023 was given in accordance with the *Residential Tenancy Act*, specifically with respect to the reasons for issuing it?

### Background and Evidence

**The landlord's agent** testified that this fixed-term tenancy began on May 15, 2013 and reverted to a month-to-month tenancy after May 31, 2014 and the tenant still resides in the rental unit. Rent in the amount of \$780.00 was payable on the 1<sup>st</sup> day of each month, which has been increased over time and is now \$970.00 per month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security

deposit from the tenant in the amount of \$395.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment in a 31-unit apartment building. The landlord's agent does not reside on the property. A copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord's agent further testified that on April 26, 2023 the tenant was served with a One Month Notice to End Tenancy For Cause, by posting it to the door of the rental unit. A copy of the Notice has been provided for this hearing and it is dated April 26, 2023 and contains an effective date of vacancy of May 31, 2023. The reasons for issuing it state:

- Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park;
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

On July 30 or 31, 2022 the tenant caused a flood in the apartment and to the unit below from an overflowing bathtub. The tenant was at home at the time, and at 11:55 a.m. the building manager got a call from the resident of the lower suite. The building manager arrived within minutes, but by that time, an inch of water was on the floor in the unit below and water was pouring out of the ceiling. That set off the fire alarm and the building was evacuated, and the electrical system was shorted out. The building manager attended to the 2<sup>nd</sup> floor and found the carpet in the hallway wet, and knocked on the door, seeing that the tenant was attempting to mop it up. The tenant said that it was not a big deal, but a small amount of water, but it was an extraordinary amount of water. The building manager pulled the plug in the bathtub.

The tenant was instructed to call his insurance company right away because obviously the tenant had caused it. That's when the heat sensor shorted out and forced evacuation. The alarm could not be shut off because of the short, and the alarm sounded for an hour. Then fuses were shorted out in both units, so there was no electricity to either apartment. Emergency restoration had to be done before putting in fuses or there would be a risk of electrocution.

The tenant called his insurance company and told the building manager that a restoration company would be dispatched and the landlord would be called when they were arriving, but no one called the landlord, and the tenant didn't update the landlord about it; the landlord was left in the dark.

The landlord called a restoration company who could not attend until about 3:00 p.m. The building manager used a shop vac to clean up on the first floor until the restoration company arrived.

With respect to breach of a material term of the tenancy agreement, the landlord referred to term 42 in the tenancy agreement, which states:

“42. LIABILITY AND INSURANCE. The tenant will not do, or permit to be done, anything that may void the landlord’s insurance covering the residential property or rental unit, or that may cause the landlord’s insurance premiums to be increased. Unless the landlord is in breach of a lawful duty, the tenant releases the landlord from any liability in connection with the use by the tenant or tenant’s guests of the rental unit or the residential property.

“The tenant agrees to carry sufficient insurance to cover his property against loss or damage from any cause and for third party liability. The tenant agrees that the landlord will not be responsible for any loss or damage to the tenant’s property. The tenant will be responsible for any claim, expense, or damage resulting from the tenant’s failure to comply with any term of this Agreement and this responsibility will survive the ending of this Agreement.”

On August 2, 2022 the landlord notified the tenant of the possibility of a breach of Term 42, and on May 18, 2023 a letter was issued to the tenant, a copy of which has been provided for this hearing. It states, in part:

“You are currently in breach of section 42 of your signed tenancy Agreement as your actions on June 30, 2022 have caused a situation that will cause your landlord’s insurance premiums to be increased. To remain a tenant... you must make arrangements with your landlord to correct this breach. You were notified in August 2022 in regards to a potential breach of section 42 of your tenancy agreement and to date there has been no engagement with your landlord to ensure it did not happen or how you intend to correct it if it did.”

The main concern is breach of Term 42 and the consequences to the landlord and other tenants, which will eventually be passed on to other tenants, over time. Current rents are all below market value.

**The tenant** testified that the parties were still in negotiations with insurance companies. The tenant was speaking heavily with his insurance adjuster at the time. The reason for the reduced communication was due to a remark in an email from the tenant's insurance adjuster dated August 5, 2023 who said to not respond to the landlord's letter. In the tenant's ignorance, the tenant continued that in future letters, which was a misunderstanding on the tenant's part. The tenant didn't know what to do, relying on his insurance adjuster regarding steps to take. The tenant did have insurance, and a copy has been provided for this hearing.

The tenant further testified that he has not received confirmation that the insurance company has paid the landlord, but has received information that the payment is ready. An Indemnity form has also been provided for this hearing.

#### SUBMISSIONS OF THE LANDLORD'S AGENT:

Because of the outstanding costs, and the difference between what was offered, the landlord's insurance premium will be increased. A final release holds a waiver that stops the landlord from recovering the full amount. There are no on-going communications between the insurance companies. The tenant's insurance company has given the full amount of what they will pay, and if the landlord doesn't agree to less than the full cost of the claim, it will result in a negative claims history.

#### SUBMISSIONS OF THE TENANT:

None

#### Analysis

Where a tenant disputes a notice to end a tenancy given by a landlord, the onus is on the landlord to establish that it was given in accordance with the *Residential Tenancy Act*, which can include the reason(s) for issuing it. I have reviewed the One Month Notice to End Tenancy For Cause and I find that it is in the approved form and contains information required by the *Act*. The reasons for issuing it are in dispute.

In order to end a tenancy for breach of a material term, the party alleging a breach 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.

The landlord's agent referred to a letter dated May 18, 2023 about tenant insurance, which in my opinion falls short of the requirements above; it does not give a deadline or indicate that if the problem is not fixed by the deadline, the landlord would end the tenancy. The landlord's agent also referred to letters dated August 4 and August 20, 2022. The first states that the landlord expects to see proof of having hired a restoration company to repair the flood damage within 15 days of receiving the letter, or a notice to end the tenancy would be issued. The letter of August 20, 2022 to the tenant indicates that the landlord was contacted by the tenant's insurance adjuster, so I am quite satisfied that the tenant has complied. Whether or not the insurance companies agree is not a breach of a material term of the tenancy agreement. There is no evidence that the landlord's premiums might increase; perhaps they will.

The other reason for ending the tenancy, "Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park," I have reviewed all of the evidence. The landlord's letter of August 4, 2022 states that the tenant was home when the flooding occurred, and indicates that the bathtub must have been running for a substantial amount of time considering the damage. It also states that the tenant provided an Incident Report indicating that the tenant had overflowed the bathtub, and that the tenant was distracted and it went unnoticed by the tenant, but the tenant did not notify the landlord's agents. There is evidence of extraordinary damage. I find that the landlord had cause to issue the Notice, and I dismiss the tenant's application.

The *Residential Tenancy Act* specifies that where I dismiss a tenant's application to cancel a notice to end a tenancy given by a landlord, I must grant an order of possession in favour of the landlord, so long as the Notice given is in the approved form. Having found that it is in the approved form, I grant an order of possession in favour of the landlord. Since the effective date of vacancy has passed, I grant the order of possession effective on 2 days notice to the tenant.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without leave to reapply.

I hereby grant an order of possession in favour of the landlord effective on 2 days notice to the tenant.

This order is final and binding and may be enforced.

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: August 21, 2023

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Residential Tenancy Branch