



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

## **DECISION**

### **Introduction**

The Tenant filed the Application for Dispute Resolution on May 2, 2023 seeking a cancellation of an end-of-tenancy notice from the Landlord. They also applied for recovery of the Application filing fee.

The Landlord filed their Application on May 15, 2023 for an order of possession associated with the same end-of-tenancy notice. They too applied for recovery of the filing fee.

The applications were crossed, and the matter proceeded to a hearing on August 24, 2023. In a decision dated August 31, 2023, an arbitrator dismissed the Tenant's Application and granted an order of possession to the Landlord.

Through a judicial review process of that decision, the Landlord and Tenant on November 27, 2023 consented to have the matter remitted back to the Residential Tenancy Branch for a new hearing.

On December 6, 2023 the Tenant filed another Application for a cancellation of a separate end-of-tenancy notice from the Landlord, and recovery of the filing fee. This Application was joined to the crossed files that the parties brought to the Residential Tenancy Branch in the rehearing.

The matter thus proceeded to a hearing, pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on February 26, 2024. The Landlord and the Tenant both attended the scheduled hearing.

### **Preliminary Matter – service of documents and evidence**

Each party confirmed they received the Notice of Dispute Resolution Proceeding from the other.

At the start of the hearing, both the Landlord and the Tenant each confirmed they received service of the document evidence from the other. I find there are no issues with disclosure of evidence in this matter.

Because I verified service, I give all evidence provided by each party full consideration where necessary and relevant herein.

### **Issues to be Decided**

- A. Is the One Month Notice to End Tenancy for Cause (the “One-Month Notice”) signed April 24, 2023 by the Landlord valid? If valid, is the Landlord entitled to an Order of Possession?
- B. Is the One-Month Notice signed on November 24, 2023 valid? If valid, is the Landlord entitled to an Order of Possession?
- C. Is the Tenant eligible for recovery of the earlier Application filing fee?
- D. Is the Landlord eligible for recovery of the earlier Application filing fee?
- E. Is the Tenant eligible for recovery of the Application filing fee?

### **Background and Evidence**

The parties agreed that the tenancy started on March 15, 1981. The Tenant provided a copy of their original application for rent, dated February 26, 1981. The document, as provided by the Tenant, provides specific conditions of the tenancy/rules, listed as items 1 through 20.

In a written statement, the Tenant set out that they purchased and started using a washer and dryer (the “laundry appliances”) from 2008. The Landlord in this tenancy came on in this role in 2017.

- A. *Is the April 24, 2023 One-Month Notice valid? If valid, is the Landlord entitled to an Order of Possession?*

The Tenant provided a copy of the first One-Month Notice, signed by the Landlord on April 24, 2023. This gave the final end-of-tenancy date as May 31, 2023.

On page 2 of the document, the Landlord indicated the following reasons:

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

The Landlord provided details on page 2:

Tenant has a washer and dryer in the unit which is a breach of a material term of the tenancy agreement. Tenant has refused to correct the breach after being served multiple caution notices.

The Landlord provided a second One-Month Notice signed April 24, 2023. That had the same end-of-tenancy date of May 31, 2023. On page 2 of this document, the Landlord indicated:

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

The Landlord expanded on the details on the second page:

Tenant is putting the unit at risk due to the moisture from the dryer venting into the unit which does not have required venting.

Tenant is putting the building at risk of potential flood due to how she operates the washer – unit does not have proper plumbing for a washer

The Tenant made their application to challenge this end-of-tenancy notice on May 2, 2023.

In the hearing, the Landlord summed up the reasons for which they seek to end the tenancy. Related to the April 2023 One-Month Notice is the significant risk involved in having a washer and a dryer installed in the rental unit. The Tenant received multiple letters to remove the appliances and refused to do so until December 2023.

A witness attended for the Landlord and presented as follows:

- the Tenant stated to the witness that they had previous written permission to use the appliances, then alternately that they could use the appliances without permission, then changed their mind again and informed the witness that they sold the appliances
- they issued a letter notifying the Tenant of a tenancy agreement breach
- they entered the unit to inspect on February 8, and observed how the Tenant would apply towels on the condensation-wet windows (that “looks like a sauna”) – the witness did not observe this in any other unit

The Landlord made other points concerning the issue overall, citing their repeated interactions and communication with the Tenant on this issue:

- letters on this issue dated August 13, 2018 and August 12, 2021 are in evidence
- a former building manager described the history with the Tenant's "difficult behaviour"
- the Tenant refused to comply with the Landlord's notification of the issue, and wanted to go to arbitration
- another building resident had a similar issue and lost on their dispute of an end-of-tenancy notice from the Landlord.

The Landlord concludes that, although the Tenant removed the laundry appliances in late 2023, the Tenant would likely re-install them. This is due to the Tenant's history of "arguments" and changing their responses and actions in reaction to the Landlord's issue.

The Landlord arranged for inspections in the rental unit, with documented reports in the evidence:

- August 10, 2023 – inspector letter to Landlord in which inspector notes "relative indoor humidity" raised by 40% with improper venting – condensation caused by dryer vented into rental unit, will affect walls/ceiling/flooring, possibly wood framing of building – washer also not connected properly
- undated – inspection report garnered specifically for the moisture issue – recommended removal of appliances because "it will cause water damage and humidity issues in the unit/building" – noting that washer will cause water backups, and dryer vents into the interior, causing "excessive humidity into the unit and surface mold build up" – further, mold and condensation on the windows/sill – the Landlord specifically pointed to this report as evidence of damage
- November 23, 2023 – inspection report noting that laundry appliances are not permitted by BC building code (cited), not installed permanently according to manufacturer's instructions (referred to), and "Potentially causing damage to the building" – the Landlord referred to this a source confirming risk of "damage beyond normal use"
- February 16, 2024 – response to a report garnered by the Tenant, reaffirming that use of dryer venting has caused high levels of moisture/humidity in the rental unit.

In response to the Landlord's evidence and testimony, the Tenant through direct questions to the Landlord/witness and in summary statements, made the following points:

- the Landlord did not share the results of an inspection for the very issue of humidity

- warning letters to the Tenant did not specify issues of humidity or damage – *i.e.*, only mention of a material term breach
- at least one inspection report did not mention any direct observation of the laundry appliances in use
- at least one inspection report did not uncover any damage
- the Landlord did not observe minute-by-minute all that at least one inspector did when entering the rental unit and making direct observations.

The Landlord presented the following additional material in their evidence:

- another Landlord agent observed the moisture issue from the outside of the building and provided pictures and video in November 2023
- an invoice/manager letter rebuts the Tenant's past claim that moisture in the rental unit was caused by a leaking refrigerator which the Landlord attended to with a technician
- a fire inspector, in answer to the Landlord's query on bylaws, stated that "it is highly recommended, for obvious reasons, that the dryer vent outdoors", providing a link to manufacturer's guidelines – also: "it is likely that [the Tenant's] insurance would not cover any damage or loss as it has been documented that the manufacturers installation guidelines were not adhered to"
- another record of inspection on April 14, 2023, observing the laundry appliances still present in the rental unit
- pictures showing towels on window sill to gather moisture, pipes running from washer into kitchen sink
- a 'Notice of Breach: 1<sup>st</sup> Warning' letter dated February 9, 2023 referencing s. 21 and 23, and s. 47(1) of the *Act*:

This letter serves as written notice of your failure to comply with a material term of our tenancy agreement on Feb 9, 2023.

This letter instructed the Tenant to resolve the situation "on or before (date) 14 days by removing the laundry appliances."

- a 'Notice of Breach – 1<sup>st</sup> Warning' letter dated February 24, 2023, again referencing sections 21 and 23 of the *Act*, giving another 14-day period for the Tenant to remove the laundry appliances from the rental unit
- a note from a former manager who noted messy upkeep of the rental unit by the Tenant, and the Tenant blocking every job/entry that the Landlord attempted, as well as the Tenant contesting rent increases over the years.

The Tenant's summary position on the key issue is that the laundry appliances they have had in place for 15 years did not cause damage in the rental unit. They noted the issue started for them in 2018 in response to a letter the Landlord gave them. At that time, they knew the tenancy agreement they had with the Landlord did not refer to laundry appliances specifically and did not set out a material term in that regard.

By early 2023, the Tenant brought the issue of their confusion on the issue to the Residential Tenancy Branch for advice. They confirmed that their input from the Residential Tenancy Branch on this issue was that the laundry appliances were not risky.

The Tenant was not hearing about the issue in terms of damage or the significant risk thereof. What they had been hearing from the Landlord previously was that, simply, the laundry appliances had to be removed. The Landlord had not provided any definitive report that set out categorically that the laundry appliances could be causing damage in the rental unit.

In 2023 the Tenant stopped using their laundry appliances, due to the Landlord's ongoing issue. In February 2023 the Tenant listed the items for sale. By the time of the August 2023 hearing, the Tenant proposed arranging an alternate outdoor-venting mechanism; however, the Landlord was not receptive to this idea. By November 2023 the laundry appliances were permanently disconnected in the rental unit. They notified the Landlord of this by letter in December.

According to the Tenant, another inspection by the Landlord in November 2023 lasted only 8 minutes, and the Landlord did not provide a copy of that report to the Tenant. The Tenant provided for their own inspection in the rental unit; this is the "Mold Assessment Report" provided in their evidence. the analyst stated that any mold that had grown on the window frames could have contributed to positive test results, "although nobody can say that conclusively."

In a written set of submissions, and an affidavit, the Tenant made the following points:

- the tenancy agreement contains no terms that would restrict the Tenant using laundry appliances in the rental unit
- the Landlord provided notice in 2018 that "water filled appliances" were not allowed – the Tenant's summary response to this was that the tenancy agreement did not disallow them
- a similar notice from the Landlord came in August 2021, followed by two formal notices in February 2023
- any end-of-tenancy notices or communication referred to "water-filled" or "liquid filled" appliances or items were a breach of a material term

- in the August 24, 2023 previous hearing, the Landlord maintained the Tenant was in breach of a material term, though the Landlord did not have a copy of the tenancy agreement
- the Tenant described a flood issue in 2021, and a leak “some ten years prior”, which raised moisture levels in the rental unit considerably
- the old windows in the rental unit property were “prone to condensation” and let in cold air – this was the reason for rolled-up towels
- the Landlord advised that they would abandon the material breach claim, proceeding to a rehearing by consent on the issue of damage to the rental unit only
- their own garnered report (in response to one provided by the Landlord) presented the doubt of the inspector, specific to mold, that laundry appliances were causing significant issues in the rental unit
- despite the stop to their use of the laundry appliances, they found continued and ongoing condensation on windows, even without cooking or bathing, in the cooler months of December and January.

The Tenant also provided a brief canvas of the applicable law in the matter, noting specifically that the onus of proof is on the Landlord. Moreover, a decision-maker in these types of evictions for cause must consider ultimately whether an eviction is “necessary or justified” with all other factors considered, with reference to the context and purpose of this particular section of the *Act* (i.e., a purposive interpretation). This includes the post-end-of-tenancy-notice conduct of the Tenant.

The Tenant also parsed the reports provided by the Landlord, specifically to say that the Landlord provided no proof of damage in the rental unit because of the laundry appliances. Likewise, there is no definitive proof from the Landlord that there is a significant risk of damage, in light of older windows present in the rental unit property, previous moisture-inducing events, and only a potential risk of mould that “can be easily cleaned with a detergent.”

Finally, in the hearing the Tenant reviewed picture and video evidence they provided in their evidence. This is to show that there is significant condensation on the windows in the rental unit, just from regular daily activities.

*B. Is the November 24, 2023 One-Month Notice valid? If valid, is the Landlord entitled to an Order of Possession?*

The Tenant provided a copy of another One-Month Notice signed by the Landlord on November 24, 2023. This provided the move-out date of December 31, 2023.

- ☐ 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 provided by the Landlord on page 2 are as follows:

The tenant has not complied with several Caution Notices (May 9, 2022, February 2, 2023 and February 24, 2023) to remove the washer and dryer in the unit. As a result, they are causing damage to the unit and putting the property at significant risk. Refer to attached inspection reports . . .

The Landlord issued and served another One-Month Notice on November 30, 2023 for the end-of-tenancy date of January 31, 2024.

On page 2 of the document, the Landlord indicated the following reasons:

- ☐ Tenant or a person permitted on the property by the tenant has
  - ☐ put the landlord's property at significant risk
- ☐ Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit

The Landlord reproduced the same details on page 2:

The tenant has not complied with several Caution Notices (May 9, 2022, February 2, 2023 and February 24, 2023) to remove the washer and dryer in the unit. As a result, they are causing damage to the unit and putting the property at significant risk. Refer to attached inspection reports . . .

The Tenant made their application to challenge this second One-Month Notice on December 6, 2023. They provided copies of both the One-Month Notice documents the Landlord issued/served in late 2023.

The Landlord's submissions, evidence and testimony for the April 2023 One-Month Notice carried over into the same issues they presented for this second One-Month Notice.

Reciprocally, the Tenant's submissions and evidence carried over into their response on these subsequent One-Month Notices.

*C. Is the Tenant entitled to recovery of the earlier Application filing fee?*

For their May 2, 2023 application, the Tenant paid the filing fee of \$100.



*D. Is the Landlord entitled to recovery of the earlier Application filing fee?*

For their May 15, 2023 application, the Tenant paid the application filing fee of \$100.

*E. Is the Tenant eligible for recovery of the Application filing fee?*

For their December 6, 2023 application, the Tenant paid the application filing fee of \$100.

**Analysis**

The *Act* s. 47 sets out the reasons for which a Landlord may give a One-Month Notice. This includes the reasons indicated on either/both of the One-Month Notices that the Landlord served to the Tenant here.

In this matter, the onus is on the Landlord to prove they have a valid reason to end the tenancy.

*A. Is the April 24, 2023 One-Month Notice valid? If valid, is the Landlord entitled to an Order of Possession?*

I find the Landlord did not provide sufficient evidence in this matter that outweighs that of the Tenant concerning each issue.

I find the Landlord could not accurately refer to a material term in the tenancy agreement that the Tenant breached. There was no full copy of the tenancy agreement in the evidence, and it is questionable whether a full copy of that agreement exists between the parties given the passage of time since the start of this tenancy. The Tenant provided an excerpted copy of the agreement (their Exhibit A), and in that evidence is no term specific to laundry appliances installed in the rental unit (which would be something very specific), nor reference in the agreement to “water-filled” or “liquid-filled” appliances or furniture. If that is the basis for the Landlord seeking to end this tenancy on the basis of a material term, I find that term is not in the evidence on the record for this hearing.

The Landlord’s direct notices to the Tenant – both labelled “1<sup>st</sup> warning” notice of breach – refer to s. 21 and s. 23 of the *Act*. On my review, these sections of the *Act* refer to deposits, and a condition inspection necessity at the start of the tenancy. I find this is inaccurate in the breach notices served to the Tenant on two occasions in February 2023. If section 21 and/or section 23 are references to the tenancy agreement, those terms do not appear I the tenancy

agreement that the Tenant provided as evidence, so I cannot verify whether these references provided by the Landlord for this notice are accurate.

The onus is on the Landlord to show that any term referred to in the agreement is considered material. I find the Landlord did not present this; therefore, any reference to a material term, as the basis for the Landlord seeking to end the tenancy, is not valid.

As an adjunct to this issue, the Tenant noted in their submission (at paragraph 18) that the Landlord consented to have the matter returned to the Residential Tenancy Branch for another hearing. The Landlord advised they would abandon the material term breach basis; therefore, I find this issue is closed from both parties' viewpoints. In conclusion, I find the tenancy shall not end on this basis.

The other ground that served as a basis for the Landlord serving the One-Month Notice on April 24, 2023 was the Tenant putting the Landlord's property at significant risk.

I find the Landlord provided a more thorough process to assess risk after this initial April 24, 2023 One-Month Notice was already in place. On this basis, I find the Landlord did not meet the Tenant halfway on the issue and have a documented opinion in place on the issue, as a measure of sound judgment on an actual assessment of risk, in order to establish that risk as "significant". There was, up to that time, no reference to humidity or moisture levels that would provide some measure to determine excessive moisture leading to mold or otherwise impacting the structure in the rental unit.

I note as well this specifically refers to *property*, as distinct from the rental unit alone. Nothing in the evidence shows, at that point, that the Landlord made a fair determination of risk to the structure.

At this point also the residual from the Tenant's past interactions with the Landlord was still palpable. In fairness to the Landlord on this point, I find they were not able to accept – if the information was conveyed to them by the Tenant – that the Tenant was making moves to get rid of the laundry appliances by that stage in April 2023, or had stopped using them.

In summary on the April 24, 2023 One-Month Notice, I find the Landlord did not establish a demonstrable risk to the property that was significant. I find this ground on the April 24, 2023 to be invalid; therefore, I grant the Tenant's Application for a cancellation of this end-of-tenancy notice. That document is cancelled and of no effect, and the tenancy shall not end for the reasons that the Landlord indicated therein.

The Landlord applied for an order of possession on the basis of this April 24, 2023 end-of-tenancy notice. I have found the One-Month Notice to be invalid; therefore, I dismiss the Landlord's Application in its entirety without leave to reapply.

*B. Is the November 24, 2023 One-Month Notice valid? If valid, is the Landlord entitled to an Order of Possession?*

By the time of the Landlord's second set of One-Month Notices dated November 24, 2023, there were a few inspections and reports to further assess the risk to the property, and any possible damage.

I find the reports point to risk of mold buildup; however, I am not satisfied that it is excessive to the point that regular cleaning would not suffice. There was a palpable level of humidity. I find that was more likely than not the cause of condensation on the windows, I am not satisfied it was the sole cause given the single-pane older age of the windows in place. The use of the dryer was not the sole contributing factor.

I also accept that the Tenant had not been using the laundry appliances through the majority of 2023. There was no inspection completed that, in fairness to the Tenant, assessed fully whether a single use of the washer or the dryer, either separately or in tandem, raised humidity and moisture levels to an extreme degree in the rental unit, such as to constitute a significant risk to the Landlord's property.

As separate from the assessments, I find the Landlord did not on their own observe the laundry appliances in operation in order to fairly assess the level of risk, either due to improper venting, or fault-prone connection of the washer to the kitchen sink.

By November 2023 the Landlord had a full chance to fully assess damage in the rental unit. I find there is no record of anything beyond condensation on windows (which is difficult to assess as damage), or some mold that would present no more of a challenge than what rigorous cleaning could address.

The Landlord made the assessment that the Tenant was "causing damage to the unit"; however, I find this is not present in the evidence. I find this reason on the November 24, 2023 One-Month Notice is also not valid.

In this matter, I give significant weight to the Tenant's presentation that they had disconnected the laundry appliances in early 2023 and moved them out from the rental unit entirely by the

end of the year. I find the Tenant has acceded to the Landlord's request that use of these laundry appliances must end.

I grant there is a purposive interpretation of what the *Act* has in place for a landlord to protect property from damage or the risk thereof. I find in this scenario that, ultimately, an end to this tenancy is not necessary or justified, given the length of this tenancy overall, and the Tenant's own life circumstances. Most importantly, I find the Tenant has complied with the Landlord's request for removal of the items.

The *Act* s. 62(3) grants that the director may make any order necessary to give effect to the rights, obligations, and prohibitions under the *Act*. In fairness to the Landlord, I immediately order the Tenant to not connect or use either of the laundry appliances without the Landlord's consent. The Tenant, via their written submissions, has offered to sign an agreement in line with this Order, and I find that is an appropriate measure of surety to the Landlord on this issue.

For each parties' knowledge, I note the *Act* s. 47 allows a landlord to end a tenancy where a tenant has not complied with an order of the director within 30 days of either the date they receive the order, or a specific date for a tenant to comply.

In sum, I grant each of the Tenant's Application for cancellation of the April 24, 2023 One-Month Notice, and cancellation of the November 24, 2023 One-Month Notice.

I dismiss the Landlord's Application for an order of possession, without leave to reapply.

*C. Is the Tenant entitled to recovery of the earlier Application filing fee?*

The Tenant was successful in the rehearing of this prior Application. I grant the Tenant recovery of the \$100 Application filing fee. I authorize the Tenant to withhold this amount from their April 2024 rent payment, one time only.

*D. Is the Landlord entitled to recovery of their earlier Application filing fee?*

The Landlord was not successful in their May 15, 2023 Application for an order of possession. I find they are not entitled to recovery of the Application filing fee.

*E. Is the Tenant eligible for recovery of the Application filing fee?*

For their December 6, 2023 application, the Tenant paid the application filing fee of \$100.

The Tenant was successful in this December 2023 Application. I grant the Tenant recovery of the \$100 Application filing fee. I authorize the Tenant to withhold this amount from their April 2024 rent payment, one time only.

### **Conclusion**

For the reasons set out above, I order the One-Month Notice issued by the Landlord on April 24, 2023 is cancelled. I order the subsequent One-Month Notice issued by the Landlord on November 24, 2023 is similarly cancelled. The tenancy remains in full force and effect.

I dismiss the Landlord's Application for this reason, without leave to reapply.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: March 15, 2024

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Residential Tenancy Branch