Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Municipal Affairs

DECISION

Dispute Codes CNC-MT / OPC-DR, FFL

Introduction

The hearing was convened following Applications for Dispute Resolution (Applications) from both parties under the *Residential Tenancy Act* (the Act), which were crossed to be heard simultaneously.

The Tenant seeks:

- An order cancelling a One Month Notice to End Tenancy for Cause (the Notice) under section 47(4) of the Act; and
- An extension of the time limit to dispute the Notice under section 66(1) of the Act.

The Landlord seeks:

- An Order of Possession based on the Notice under section 55(2)(b) of the Act; and
- To recover the filing fee for the Application under section 72(1) of the Act.

The Tenant and an Agent for the Landlord attended the hearing.

Service of Notice of Dispute Resolution Proceeding and Evidence

The parties confirmed receipt of the Notice of Dispute Resolution Proceeding Packages for each Application and the other's evidence. No issues with service were raised. Given this, I find that these records were served as required under sections 88 and 89 of the Act.

Preliminary Issue - Amendment

Under section 64(3)(c) of the Act I amended the Tenant's Application to correct the name of the Landlord as there appeared to be a minor typographical error. I also amended the Landlord's Application to remove the Tenant's guarantor as a party to the Application since they are not a tenant.

As will be noted later in this Decision, the Tenant applied to cancel the Notice within the statutory timeframe so no extension under section 66(1) of the Act is required. I amended the Tenant's Application to remove this claim since it is redundant.

Issues to be Decided

- Is the tenancy ended under the Notice?
- Can the Landlord recover the filing fee for their Application from the Tenant?

Background and Evidence

The parties were given an opportunity to present evidence and make submissions. I have reviewed all written and oral evidence provided to me by the parties, however, only the evidence relevant to the issues in dispute will be referenced in this Decision.

The parties agreed on the following regarding the tenancy:

- The tenancy started on May 1, 2025.
- Rent is $1,650.00 per month, due on the first day of the month.
- A security deposit of $825.00 was paid by the Tenant on April 18, 2025, which the Landlord still holds.
- There is a written tenancy agreement, a copy of which was entered into evidence.
- The Tenant still occupies the rental unit, an apartment suite.

The Landlord's position

On June 18, 2025, a tenant of the residential property emailed the Landlord's Agent advising the "neighbors" in the suite number matching the Tenant's rental unit were smoking weed in the bike room at the residential property. A copy of the email was

provided as evidence by the Landlord and also references a previous interaction regarding smoking on the driveway of the residential property.

The Landlord's Agent issued a warning letter to the Tenant on June 19, 2025 by regular mail, a copy of which was submitted as evidence. Though the letter refers to "section 43" of the tenancy agreement, the Landlord sought to rely on paragraph 42 of the tenancy agreement which provides the following:

> *"42. SMOKING AND VAPING. The Tenant agrees to the following material term regarding smoking and vaping:*
>
> *NO smoking, vaporizing tobacco or using e-cigarettes, cannabis (including medical cannabis) and other combustible materials on the residential property; meaning, not within the rental or on the exterior of the property.*
>
> *The Tenant acknowledges this Material Term applies to the Tenant, Occupants and guests of the Tenant or Occupant."*

The Tenant and the Landlord's Agent are seen to initial in agreement to the term.

On July 14, 2025, the Landlord's Agent received another email from the same occupant of the residential property who had sent the June 18 email. A copy of the July 14 email was submitted as evidence and has the subject "Guests or tenants of [rental unit number]" and outlines seeing people in the bike locker smoking marijuana and coughing.

The Landlord's Agent issued another warning letter on July 18, 2025 to the Tenant. A copy was provided as evidence and refers to the Tenant and their guest being seen smoking cannabis in the bike room and indicates a "30-day eviction notice" for breaching a material term of the tenancy agreement will be issued.

The Notice was served on July 23, 2025 by attaching to the door of the rental unit.

A copy of the Notice was entered into evidence. The Notice is on the approved form, is signed and dated July 23, 2025 and provides an effective date of August 31. The reason for ending the tenancy, per the Notice is:

- 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's Agent argued the Tenant had breached the material term of the tenancy agreement prohibiting smoking on the residential property and continued to do so after the written warning of June 19. Given this, the Landlord seeks an end to the tenancy under the Notice.

Aside from the two letters of June 19 and July 18, there had been no communication with the Tenant. There was no follow up with the author of the emails of June 18 and July 14. The Landlord's Agent indicated they believe the author knows the Tenant as they live on the same floor of the residential property, so will have seen them going into the rental unit.

The Tenant's response

The Tenant denied receiving the warning letter of June 19, though confirmed they received a letter dated July 17, a copy of which was submitted as evidence, which refers to a first warning letter of May 8, 2023, which confused them.

The Tenant acknowledged that they smoke, though they rarely smoke cannabis. The Tenant testified that early on in the tenancy at the beginning of May 2025 they were smoking on the driveway of the residential property close to the sidewalk and another tenant of the residential property said this was not allowed and that they would get in trouble. The Tenant affirmed they did not smoke on the residential property after this, and denied they or any guests of theirs had smoked in the bike room or anywhere else on the residential property.

The Tenant also argued that there were inconsistencies in the email to the Landlord's Agent dated June 18 as the author refers to seeing the bike room on their way to the store, which would not be possible in their view given the layout of the residential property.

The Tenant acknowledged receiving the Notice on July 23 and submitted their Application disputing it on August 1.

The Landlord's reply

The Landlord's Agent clarified that they had issued a letter on July 17 which contained an error regarding the date of the first written warning, so sent a second letter to the Tenant on July 18 with the correct date.

Analysis

Section 47 of the Act states that a landlord may end a tenancy for cause by issuing a Notice to End Tenancy. Section 47(4) of the Act states that a tenant may dispute a notice for cause by making an application for dispute resolution within ten days of receipt, as is the case here.

Rule 6.6 of the *Rules of Procedure* states that when a tenant applies to cancel a Notice to End Tenancy, the landlord must prove the reason they wish to end the tenancy and that the standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

There is one reason provided on the Notice which is echoed in section 47(1)(h) of the Act which sets out that a landlord may end a tenancy if the tenant has:

- Failed to comply with a material term; and
- Has not corrected the situation within a reasonable time after the landlord gives written notice to do so.

A material term is at the heart of an agreement and non-compliance by a party significantly diminishes the value or benefit of the agreement for the other. Even the most trivial breach of a material term gives the other party the right to end the agreement.

Policy Guideline 8 - *Unconscionable and Material Terms* states that it is for the person relying on the term to present evidence and arguments supporting the proposition that the term is a material term. Simply because the parties have put in the agreement that one or more terms are material is not decisive.

Policy Guideline 8 also provides that 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.

In this case, I find there are frailties in the Landlord's reasons for issuing of the Notice.

Firstly, as noted above, in order for a landlord to be entitled to end a tenancy for breach of a material term, written notice regarding the alleged breach must be given to the tenant, as set out in section 47(1)(h)(ii) of the Act. I find the Landlord has failed to establish this was done.

Whilst the Landlord's Agent affirmed the letter of June 19, 2025 was sent to the Tenant by regular mail, no corroborating evidence to support this was provided. The Tenant denied receiving the letter. The Landlord did not provide any records such as a receipt or photograph of the envelope addressed to the Tenant, nor was there any follow-up with the Tenant where receipt of the letter may have been confirmed. In these circumstances, I find the Landlord has failed to prove on a balance of probabilities that the notice regarding the alleged breach on the Tenant's part was sent to the Tenant in accordance with section 88 of the Act. I find insufficient evidence to make any order under section 71(2)(c) of the Act that the record was sufficiently given to the Tenant despite this.

From the above, I find the Landlord has not adequately demonstrated that the Tenant was put on notice regarding the alleged material breach. I also observe that the parties have an agreement to serve one another via email, though this method was not used by the Landlord to send the June 19 letter.

Secondly, I find the Landlord has failed to establish that the Tenant engaged in the pattern of repeated smoking on the residential property as alleged. The Landlord's Agent attended the hearing to present arguments on the issue but had not witnessed any incidents themselves first-hand. The author of the two emails provided as evidence was not called as a witness to provide affirmed testimony or further context to their correspondence.

The Tenant denied the allegations made against them with testimony I found to be clear, consistent, and candid. I found the Tenant was open on the issue and acknowledged they smoked on the driveway of the residential property close to the sidewalk at the start of the tenancy, which was a fault on their part that they testified had been corrected and did not reoccur. Overall, I found the Tenant's testimony to be transparent, was not evasive or deflective, and ultimately carried significant weight.

From the above, I find the Tenant's evidence on the issue of their conduct regarding smoking carries more weight than the Landlord's. I find the Landlord has failed to prove the pattern of smoking by the Tenant took place as alleged.

Finally, I find the Landlord has failed to establish that the term in question at paragraph 42 of the tenancy agreement is a material one. The term itself makes reference to it being a material one, but as already noted, simply referring to a term as a material term does not make it one. Beyond the bare assertion from the Landlord's side that the term was a material one, I found insufficient evidence to indicate this was the case. I find credible evidence supporting the importance of the term in the context of the agreement was not provided.

For the above reasons, I find the Landlord has failed to establish they had sufficient cause to issue the Notice to the Tenant and obtain an end to this tenancy. I therefore grant the Tenant's Application and dismiss the Landlord's Application without leave to reapply. I order the One Month Notice to End Tenancy for Cause dated July 23, 2025 cancelled and of no force or effect. This tenancy continued until ended in accordance with the Act.

As the Landlord was not successful in their Application, the request to recover the filing fee under section 72(1) of the Act is dismissed, without leave to reapply.

Conclusion

The Notice is cancelled. The tenancy continues until 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 Act.

Dated: September 08, 2025

Residential Tenancy Branch