



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, MNDC, OLC, O

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenants on July 27, 2016 for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; for the Landlord to comply with the Act, regulation or tenancy agreement; and for “Other” issues. The Tenant then amended her Application requesting to cancel a notice to end tenancy for cause and a request to recover her costs associated with preparation for this hearing.

All the parties named on the Application for the Landlord, and the female Tenant appeared for the hearing and provided affirmed testimony during the hearing. The Landlords confirmed that they had received the Tenants’ Application, her amended Application and the Tenants’ evidence prior to the hearing. The Tenant confirmed receipt of the Landlords’ evidence prior to the hearing.

The parties for the Landlord confirmed that two of them were the owners of the rental unit and the other party was the caretaker of the residential building where the rental unit was located. The parties confirmed that the Tenant had a written tenancy with the previous caretaker of the building and that he had passed away during the tenancy and had been replaced by the current caretaker appearing for this hearing.

During the hearing, the Tenant struggled to present her monetary claim as she had submitted a large amount of evidence which she was unable to reference in the hearing. The Tenant asked that she needed more time to prepare and present the evidence for her monetary claim. As a result, I allowed the Tenant to withdraw her monetary claim against the Landlord and the parties agreed that the only matter that would be dealt with in this hearing would be the Tenant’s request to cancel the notice to end tenancy. Therefore, I provided the Tenant leave to re-apply for the remainder of her Application but the Tenant was cautioned that costs for preparing for a hearing are not awardable.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the issues to be decided.

### Issue(s) to be Decided

Should the notice to end tenancy for cause be cancelled?

### Background and Evidence

Both parties agreed that this tenancy started on July 1, 2013 on a month to month basis. Rent is payable in the amount of \$680.00 on the last day of each month. The Tenant paid a security deposit of \$330.00 at the start of the tenancy which the Landlord still retains. The parties confirmed that the Tenant was not in any rental arrears at the time of this hearing.

The Tenant confirmed personal receipt of a 1 Month Notice to End Tenancy for Cause (the "Notice") on August 30, 2016. The Notice was provided into evidence and details a vacancy date of September 30, 2016. The reasons the Landlords elected on the Notice to end the tenancy was because the Tenant is alleged to have breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so was given to the Tenant.

The Landlord was asked to present evidence of this reason as they bear the burden to prove the Notice. The female Landlord testified that the Tenant is engaging in a course of harassment against them and the caretaker which is causing disruption to the Landlords, the caretaker, and other residents. However, the Landlords were unable to point me to the material term in the actual residential tenancy agreement that had been breached by the Tenant.

### Analysis

In relation to the form and content of the Notice, I find it complied with the requirements of Section 52 of the Act and that it was served to the Tenant pursuant to Section 88(a) of the Act on August 30, 2016. As the Tenant amended her Application on September 6, 2016 to dispute the Notice, I find that this was done within the ten day time limit stipulated by Section 47(4) of the Act. When a landlord issues a tenant with a Notice and it is then subsequently disputed, the landlord bears the burden of proving the reasons on the balance of probabilities. Therefore, I must determine if the Landlord has met the burden to prove the reason elected on the Notice.

Pursuant to the Notice, the Tenant is alleged to have breached a material term of the tenancy agreement. In this respect, this reason can only be upheld if there is a written tenancy agreement that contains a material term, and it is that written material term that has been breached by the Tenant. The Landlord was unable to refer to me a clause in the residential tenancy agreement that was provided into evidence that the Tenant had breached.

Notwithstanding the Landlords' allegation and evidence that the Tenant engaged in a course of harassment, this does not relate to the reason elected on the Notice. Therefore, I am only able to find that as the Landlords failed to establish an actual material term that was documented in the signed tenancy agreement, this reason cannot be upheld. I therefore, cancel the Notice and find that the tenancy must continue until it is ended in accordance with the Act.

The parties were informed during the hearing that the Landlord is at liberty to issue another Notice to the Tenant and the Tenant is at liberty to make an Application to dispute that Notice and make a monetary claim against the Landlord. However, I strongly encouraged the parties during the hearing, that they should turn their minds to resolution in this manner and attempt to work together to resolve this dispute between them in the best way possible.

### Conclusion

The Landlord did not prove the reason on the Notice. Therefore, I grant the Tenant's Application to cancel the Notice dated August 30, 2016. The tenancy will continue until it is ended in accordance with the Act. The remainder of the Tenant's Application is dismissed with leave to re-apply. 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 20, 2016

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Residential Tenancy Branch