



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, FF, SS,

### Introduction

On August 19, 2016, the Tenant submitted an Application for Dispute Resolution asking that a 1 Month Notice to End Tenancy for Cause dated August 11, 2016, (“the 1 Month Notice”) be cancelled, and asking for a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the Act), regulations, or tenancy agreement.

The hearing was scheduled as a teleconference hearing. The Landlord and Tenant appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Rules of Procedure permit an Arbitrator to exercise discretion to dismiss unrelated claims with or without leave to reapply. As the primary issue to decide is whether or not the tenancy is ending due to a notice to end tenancy, I have dismissed the Tenant’s monetary claims with leave to reapply.

The Tenant testified that she received evidence from the Landlord but she is unable to open the USB data stick. The Tenant testified that she tried to open the USB data stick on two different computers but she was not able to view the contents.

Residential Tenancy Branch Rule of Procedure 3.10 states that the format of digital evidence must be accessible to all parties. Before the hearing the party submitting the digital evidence must determine that the other party and the Residential Tenancy Branch have playback equipment or are otherwise able to gain access to the evidence. If a party is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

The Landlord testified that she never contacted the Tenant to determine whether the Tenant could access the digital evidence. I find that the Tenant was unable to access the digital evidence and I rule that the Landlord's digital evidence will not be considered in this hearing.

The Tenant's application included a request to serve documents in a different way than required by the Act; however, the parties testified that they received each other's evidence. The request for substituted service is not required.

#### Issues to be Decided

- Does the Landlord have cause to end the tenancy and is she entitled to an order of possession?
- Should the Notice to End Tenancy be cancelled?

#### Background and Evidence

Both parties testified that the tenancy commenced on November 1, 2011, and is a fixed term tenancy ending on October 31, 2016. The Tenant pays monthly rent in the amount of \$2,750.00 by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$1,300.00 and a pet damage deposit in the amount of \$1,300.00.

The Landlord testified that she is trying to sell her house and it is important that the house be kept tidy. She submitted that there is a clause within the lease that requires the house to be kept tidy. She testified that after an open house in mid-June, her agent reported to her that the house was not tidy.

On June 29, 2016, the Landlord issued a letter to the Tenant to remind her that the lease requires the house to be tidy. The Landlord testified that an inspection was conducted and the unit was found to be untidy. On July 15, 2016, the Landlord issued another letter to the Tenant which specified the areas that required cleaning. After an

inspection on August 11, 2016, the Landlord found no improvement so she directed her agent to issue the eviction notice.

The Landlord provided a copy of the lease and copies of the letters that were issued to the Tenant.

The Landlord's witness, D.K. testified that during the first inspection he found the residence clean with respect to dirt, but it was cluttered. D.K. testified that on August 11, 2016, there was a storage container on the property but it did not look like the Tenant had removed anything from the property and had not done anything to tidy up. D.K. testified that the house was in a general state of disarray. D.K. testified that the Tenant was given a list of demands but became hostile and did not cooperate.

The Landlord testified that a 1 Month Notice was issued to the Tenant on August 11, 2016.

The reason for ending the tenancy within the 1 Month Notice is a breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The 1 Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant testified that she received the 1 Month Notice on August 11, 2016. The Tenant disputed the Notice on August 19, 2016.

The Tenant testified that she is a realtor and the house was rented as a home and a business. She testified that her home is clean and in good condition. She testified that she uses some rooms for storage. She testified that she was not unpleasant to D.K. and that she did not feel the need to tidy up. She testified that there is no fire hazard and that she stores items in the garage on metal racks.

A witness for the Tenant, G.B. testified that the bylaws for the city allow for storage lockers on the property. G.B. submitted that the testimony of D.K. is contrary to a letter D.K. sent to the Landlord. G.B. referenced a letter that D.K. sent to the Landlord that states the house is reasonably clean in that the bathrooms, kitchen appliances, floors, deck, yard have been cared for and look to be in relatively good condition.

The Landlord testified that when she initially rented the property to the Tenant, the Tenant did indicate it would be used as an office but not solely for business.

### Analysis

Section 32 of the Act states that a Tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the Tenant has access.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In the matter before me, the Landlord has the onus to prove that the reason in the 1 Month Notice is valid. With respect to whether the Tenant breached a material term of the tenancy, I turn to the Landlord's evidence. The tenancy agreement has a term that states the Tenant must keep all areas inside and outside in a presentable state of cleanliness and tidiness. The Landlord submitted that the Tenant is untidy and the Tenant submitted that the house is clean and in good condition. I find that there is no term of the tenancy that the Tenant cannot use rooms for storage. When parties provide equally believable testimony the burden of proof rests with the Landlord who issued the notice to end tenancy. The Landlord's digital evidence was excluded from the hearing.

I find that there is insufficient evidence from the Landlord to establish that the Tenant has failed to maintain reasonable health and cleanliness and sanitary standards throughout the rental unit; therefore, I cancel the 1 Month Notice to End Tenancy for Cause, dated August 8, 2016.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

### Conclusion

The Tenant's application is successful. The 1 Month Notice issued by the Landlord dated August 11, 2016, is cancelled.

The tenancy will continue 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 *Residential Tenancy Act*.

Dated: October 20, 2016

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Residential Tenancy Branch

