



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **CNC, MNDCT, RP, LRE, OLC**

Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- A monetary order for compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (“*Regulation*”) or tenancy agreement pursuant to section 67 of the *Act*;
- An order requiring the landlord to carry out repairs pursuant to section 32;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;
- An order requiring the landlord to comply with the *Act* pursuant to section 62;

Summary of Decision

The tenant’s application is granted, and the One Month Notice is dismissed.

The landlord has not established the grounds for the issuance of the One Month Notice. The tenancy shall continue until ended in accordance with the Act or the agreement.

Preliminary Issues:

1. Attendance
2. Service
3. Settlement Discussions
4. Severance
5. Order of Possession

1. Attendance

The parties were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions.

2. Service

No issues of service were raised. I find each party served the other in compliance with the Act.

The parties agreed and I order they shall serve each other at the email addresses on the first page from now on.

3. Settlement Discussions

I explained the hearing and settlement processes, and the potential outcomes and consequences, to both parties. Both parties had an opportunity to ask questions, which I answered. Neither party made any adjournment or accommodation requests. I informed both parties that I could not provide legal advice to them. I informed them I make my Decision after the hearing and not during the hearing.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties do so during the dispute resolution proceedings, the settlement may be recorded in the form of a Decision or an Order.

The Arbitrator assisted the parties in efforts to settle the matter. Settlement discussions were unsuccessful, and the hearing continued.

4. Severance

The tenant's application included unrelated claim(s) in addition to the tenant's application to dispute the landlord's One Month Notice.

Rule 2.3 of the Residential Tenancy Branch Rules of Procedure states that claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

I find that the tenant's primary application pertains to disputing a notice to end tenancy. I find that the additional claim(s) are not related to whether the tenancy continues.

Therefore, all the tenant's claim(s) except for the application to dispute the landlord's Notice are dismissed with leave to reapply.

The tenant may reapply for these claims subject to any applicable limits set out in the *Act*, should the tenancy continue.

5. Order of Possession

I informed the parties that in the event I dismissed the tenant's application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if

(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and

(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.

The landlord requested an Order of Possession.

Issue(s) to be Decided

Is the tenant entitled to an order cancelling the One Month Notice?

Is the landlord entitled to an Order of Possession?

Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony presented, only the details of the respective submissions and arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of this application and my findings are set out below.

Tenancy

The rented unit is the downstairs apartment in a building owned by the landlord which also contains an upstairs apartment.

The parties submitted a copy of the signed tenancy agreement and agreed as follows:

INFORMATION	DETAILS
Type of Tenancy	Fixed term
Beginning Date	May 1, 2022
Fixed Term End Date	April 30, 2023
Rent payable on first of month	\$1,750.00
Security deposit	\$875.00
Condition Inspection Report on Move-In	no
Arrears of Rent	no

Previous Decision

This is the second dispute between the parties. The landlord's application for an Order of Possession under a 10 Day Notice was dismissed on December 3, 2022. The hearing number is referenced on the first page.

One Month Notice

The parties agreed the landlord issued a One Month Notice as follows, service acknowledged by the tenant.

INFORMATION	DETAILS
Type of Notice	One Month Notice
Date of Notice	January 13, 2023
Effective Date of Notice	March 1, 2023
Date and Method of Service	Attached door
Effective Date of Service	January 16, 2023

A copy of the Notice was submitted which is in the standard RTB form. The landlord claimed the tenancy should be ended because:

1. Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
2. Tenant put the landlord's property at significant risk.
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The tenant filed an Application for Dispute Resolution within the period of 15 days allowed in the Notice.

Landlord's Evidence

The landlord provided testimony claiming the tenant was difficult, defiant and troublesome.

Of primary relevance to the One Month Notice, the landlord claimed the tenant left personal possessions in the building's carport when he moved in. She repeatedly asked him to remove the items and gave him verbal and written warnings. The final warning was on December 15, 2022. The tenant did not remove his belongings.

The landlord submitted photos of the carport showing a disorderly collection of boxes and items of various sizes and kinds. The landlord claimed the items included wood working equipment which could be activated by neighbouring children and were accordingly a safety issue.

The landlord also claimed the upstairs occupants had to navigate the messy mixture of items to get access to their unit and to get to the garbage cans. This was inconvenient and potentially dangerous for them. The landlord submitted no documentary evidence in support of this claim and did not call any witnesses.

The tenant removed his possessions from the carport when the landlord issued this One Month Notice on January 13, 2023.

The landlord acknowledged the issue has been resolved.

Tenant's Evidence

The tenant acknowledged that his personal possessions were in the carport from the time he moved, the landlord had warned him to remove the items, and he had done so until she issued the One Month Notice.

The tenant claimed he did not remove the items before this because the clutter of boxes was insignificant, did not harm anyone, and any equipment could not be activated.

The tenant claimed the landlord often bothered him and disturbed his peace by posting written notices to his door and making unreasonable demands. He said the landlord pesters him about insignificant matters, such as his possessions in the carport, while ignoring his maintenance requests which include getting rid of silverfish in his unit.

The tenant wants to remain in the unit and requested the cancellation of the One Month Notice.

Analysis

I have reviewed all evidence before me that met the requirements of the Act and the Rules of Procedure. Not all this evidence is referenced in my Decision. I refer to only the relevant, admissible and significant evidence in support of my conclusions and the facts as I find them.

Burden of Proof

The landlord issued a Notice to End Tenancy. The tenant filed the Application for Dispute Resolution within the time allowed.

Therefore, in this case, the onus or burden shifts to the landlord to prove the reasons on the Notice. The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the Notice.

1. Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
2. Tenant put the landlord's property at significant risk.
3. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The question is whether failure of the tenant to keep the carport free of his possessions is grounds for the landlord to end the tenancy for one of the above reasons.

Each ground is addressed.

1. Tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

The parties agreed the tenant left various possessions in the carport when he moved in on May 1, 2022. I accept the photos submitted by the landlord as evidence of the disorderly appearance of his items. The tenant acknowledged the photos were accurate.

The parties also agreed the tenant received written warning to clear the carport and did so only later, after he was served with the One Month Notice on January 13, 2023.

I accept that the landlord is dissatisfied with the tenancy and wants the tenant to move out. I understand she finds the tenant's possessions in the carport to be unsightly, disturbing and disorderly.

The landlord has provided very little in the way of direct evidence to show the storage of the items in the carport was of a magnitude sufficient to warrant

ending the tenancy. The tenant argues that he never jeopardized the health or safety or lawful right another occupant.

I would have expected the landlord to provide copies of any complaints from the other occupants. The landlord has not done this.

I find the landlord has not established that the health and safety of the occupants or the landlord was seriously threatened or jeopardized by the tenant leaving his possessions in a jumble in the carport. While messy and disorderly, I find there was nothing dangerous or unsafe in the clutter of the tenant's possessions.

The landlord claimed the tenant's possessions jeopardized the lawful right of the occupants or the landlord. What is 'lawful right of the occupants'?

Section 28 of the Act conveys the right to quiet enjoyment of the rent unit to the other occupants. Where a tenant unreasonably disturbs another occupant, the landlord may evict the tenant. This means if an occupant of a residential property is unreasonably disturbed by another tenant, the landlord's remedy is to evict the tenant.

The landlord failed to prove the tenant's clutter and possessions in the carport unreasonably disturbed and/or jeopardized other occupant's rights to quiet enjoyment of the residential property. I fail to see any reason why those occupants affected by the tenant's alleged conduct could not have attended the hearing or provided an affidavit regarding the specifics of the conduct including how that conduct impacted them directly.

In summary, I find the landlord has not met the burden of proof under this cause. I find the placement of the tenant's possessions in the carport not to amount to seriously disturbing either health or safety or the lawful right of the upstairs occupant of the landlord. I also find the lawful rights of other occupants, or the landlord have not been jeopardized.

I therefore find the landlord has failed to meet the burden of proof regarding this ground.

2. Tenant has put the landlord's property at significant risk

The landlord said the tenant's chaotic possessions in the carport put the property at risk. However, she did not submit any evidence of this. The items did not include anything inherently dangerous, such as a flammable liquid.

The tenant acknowledged some of the items were parts of equipment which, if assembled and connected to a power source, could be dangerous. However, he testified that nothing was operable as it was and there was no danger to anyone.

In considering all the evidence, I find the landlord has not established that the property was endangered by the tenant's possessions in the carport. I find there was no significant risk. I find the equipment was disassembled and not in an operable condition.

I find the landlord has not established this ground for the issuance of the One Month Notice.

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

Section 47(1) of the Act allows a landlord to end a tenancy for cause for any of the reasons cited in the section. A party may end a tenancy for the breach of a material term of the tenancy. Section 47(h) of the Act states as follows:

Landlord's notice: cause

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

- (h) the tenant
 - (i) has failed to comply with a material term, and
 - (ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

As noted in *RTB Policy Guideline #8 – Unconscionable and Material Terms*, a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the Agreement.

To determine the materiality of a term, an Arbitrator will focus upon the importance of the term in the overall scheme of the Agreement. It falls to the person relying on the term, in this case the landlords, to present evidence and argument supporting the proposition that the term was a material term.

The question of whether a term is material and goes to the root of the contract must be determined in every case in respect of the facts and circumstances surrounding the creation of the Agreement in question. The same term may be material in one agreement and not material in another. Applications are decided on a case-by-case basis. Simply because the parties have stated in the agreement that one or more terms are material, is not decisive. The Arbitrator will

look at the true intention of the parties in determining whether the clause is material.

The party claiming a breach of a material term must establish that the breach makes it impossible for the tenancy to continue.

Policy Guideline #8 reads in part as follows:

To end a tenancy agreement 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...

I find that the landlord's requirement the tenant must not store his possessions in the carport is **not** so important that the most trivial breach of that term gives the other party the right to end the Agreement.

I acknowledge the landlord is disturbed and upset by the clutter of the items in the carport, now removed.

However, to establish breach of a material term, more is required of the landlord to end a tenancy under this ground. I find the landlord has not met this burden of proof.

I conclude the tenant is not in breach of a material term of the tenancy.

Summary

I grant the tenant's application to dismiss the Notice. The One Month Notice is vacated and of no effect.

As the Notice has been dismissed, I direct that the tenancy shall continue until it is ended in accordance with the agreement and the Act.

Conclusion

I grant the tenant's application to dismiss the Notice. The One Month Notice is vacated and of no effect.

The tenancy shall continue until it is ended in accordance with the agreement and 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: April 05, 2023

Residential Tenancy Branch