



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding REDBRICK PROPERTIES  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

Pursuant to section 58 of the *Residential Tenancy Act* (the Act), I was designated to hear an application regarding a tenancy. On March 13, 2023, the tenant applied for:

- an order to cancel a One Month Notice to End Tenancy for Cause, dated March 13, 2023 (the One Month Notice); and
- recovery of the filing fee.

Those present were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses; they were made aware of Residential Tenancy Branch Rule of Procedure 6.11 prohibiting recording dispute resolution hearings.

Neither party raised an issue regarding service of the hearing materials.

### Issues to be Decided

- 1) Is the tenant entitled to an order to cancel the One Month Notice?
- 2) If not, is the landlord entitled to an order of possession?
- 3) Is the tenant entitled to the filing fee?

### Background and Evidence

The parties agreed on the following particulars regarding the tenancy. It began November 1, 2013; rent is \$1,050.00, due on the first of the month; and the tenant paid a security deposit of \$425.00, which the landlord still holds.

The landlord testified that the One Month Notice was served on the tenant by email on March 13, 2023; I note the tenant applied to dispute the Notice the same day.

A copy of the One Month Notice was submitted as evidence. It is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

The reason indicated for the One Month Notice is that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

The landlord testified that the tenancy agreement requires tenants to have liability insurance, and that tenants not put the landlord's insurance at risk, or cause the landlord's insurance premiums to increase. The landlord testified that despite repeated reminders, including one on July 18, 2022, the tenant did not have tenant liability insurance until July 21, 2022. The landlord submitted that the tenant's failure to have tenant insurance in place from November 1, 2013 to July 21, 2022 put the landlord's property at significant risk.

The tenant testified that she received only one notice from the landlord regarding the need for insurance, on July 18, 2022, and that she acted promptly to secure the required insurance by July 21, 2022. The tenant submitted that the landlord is attempting to evict her as she pays below-market rent.

The landlord submitted as evidence a receipt from an insurance company, dated July 21, 2022, with the tenant's name written at the top.

### Analysis

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

Based on the evidence before me, I find the landlord sufficiently served the One Month Notice on the tenant by email in accordance with section 71 of the Act on March 13, 2023, and that it was received by the tenant on the same day.

I find the One Month Notice meets the form and content requirements of section 52 of the Act, as it is signed and dated by the landlord, gives the address of the rental unit, states an effective date, states the grounds for ending the tenancy, and is in the approved form.

Section 47 of the Act states that a tenant receiving a One Month Notice may dispute it within 10 days after the date the tenant receives the Notice. As the Notice is dated March 13, 2023 and the tenant applied to dispute it on the same day, I find the tenant met the 10-day deadline.

Rule 6.6 states:

**6.6 The standard of proof and onus of proof**

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.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, the onus is on the landlord to prove the reason they wish to end the tenancy as indicated on the One Month Notice.

The landlord testified that despite repeated reminders, the tenant did not have tenant liability insurance until July 21, 2022. The landlord submitted that the tenant's failure to have the insurance in place from November 1, 2013 to July 21, 2022 put the landlord's property at significant risk.

The tenant testified that she received only one notice from the landlord regarding the need for insurance, and that she secured the required insurance by July 21, 2022, three days after receiving the landlord's notice.

In *Senft v. Society for Christian Care of the Elderly*, 2022 BCSC 744, the justice found that "arbitrators must keep the protective purpose of the RTA in mind when construing the meaning of a provision of the [Act]," and that an analysis of a dispute must consider the "post-notice" conduct of a tenant when deciding whether an end to tenancy is justified or necessary in the context of the protective purposes of the Act.

The parties agree that the tenant had tenants liability insurance as of July 21, 2022. The tenant had the insurance not only after the March 13, 2023 service of the One Month Notice, but prior to service of the Notice. I therefore find that the landlord has failed to

prove the reason for the One Month Notice, that being that the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

Therefore, I cancel the One Month Notice, and find the landlord is not entitled to an order of possession in accordance with section 55 of the Act.

Section 72 of the Act gives me the authority to order the repayment of a fee for an application for dispute resolution. As the tenant is successful in her application, I order the landlord to pay the \$100.00 filing fee the tenant paid to apply for dispute resolution.

Pursuant to section 72 of the Act, the tenant is authorized to make a one-time deduction of \$100.00 from a future rent payment in satisfaction of the above-noted award.

### Conclusion

The tenant's application is granted.

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 06, 2023

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Residential Tenancy Branch