



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

### Dispute codes

CNC, MNDC, FF

### Introduction

This hearing was convened in response to an application filed on August 30, 2011 by the tenant to cancel a 1 Month Notice to End Tenancy for Cause (the Notice to End) dated August 20, 2011, with the reasons as:

- Tenant is repeatedly late paying rent, and*
- 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 alleges that the tenant is using the residential unit for commercial purposes, and has not acquired content insurance as per the tenancy agreement, and that the applicable terms are 'material terms' of the agreement.

The tenant also applies for compensation for damage and loss in the amount of \$1800, for what the tenant terms as "non-stop harassment" by the landlord, resulting in loss of quiet enjoyment. The tenant further applies for recovery of their filing fee.

Both the tenant and the landlord appeared in the conference call and each participated in the hearing via submissions and affirmed / sworn testimony.

For this type of application, the onus is on the landlord to prove the Notice to End was issued for valid and sufficient reasons as stipulated in the Notice to End, and that the reasons must constitute sufficient cause for the Notice to be valid. The landlord need not prove all reasons identified in the Notice to End for wanting to end the tenancy.

At the outset of the hearing the landlord verbally requested an Order of Possession should I uphold the Notice to End.

### Issue(s) to be decided

Is there *sufficient* cause to end the tenancy for the reasons advanced by the landlord?  
Is the landlord entitled to an Order of Possession?  
Is the tenant entitled to the monetary amounts claimed?

### **Background and evidence**

The relevant evidence in this matter is as follows. This tenancy began May 15, 2011. There is a written tenancy agreement governing this tenancy. Rent in the amount of \$1050 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit. Standard utilities of electricity, water, heat and garbage are stipulated as included in the rent. The tenancy agreement is mute on the provision of cable/satellite, however the parties agree that this aspect, at \$30 per month, was later verbally agreed between them and would be added to the required payment to the landlord each month. There is considerable disagreement between the parties as to the facts surrounding the payment of rent and cable. The landlord claims that the tenant did not pay \$10 of the rent for June 2011 toward the payable rent of \$1050 – *paying only \$1040 in cash, with no receipt issued* – the tenant disagrees that he owes this \$10. The landlord and tenant agree that the full amount of rent and cable for July was paid fully in cash in instalments by July 05, 2011. The parties agree that the rent and cable was paid in full by August 15, 2011.

The landlord claims that the tenant stores a quantum of plumbing supplies in the rental unit, contrary to the tenancy agreement, but has not provided the tenant with written notice of this purported breach. The landlord further claims that the tenant has breached the tenancy agreement by not providing the landlord with a copy of the tenant's content insurance policy – only providing a copy of a quote. The tenant disputes he does not have content insurance and is able to provide the landlord with proof and has attempted to do so. The landlord claims the tenant's insurance broker could not confirm the tenant's policy as in effect.

The tenant claims the landlord has repeatedly harassed him since the outset of the tenancy, and claims he has evidence of the purported harassment, including possible witnesses, recorded accounts of harassment, and letters from the landlord – all which have deterred the tenant's right to quiet enjoyment of the tenancy. The tenant has not provided any of this purported evidence in their application, but provided a testimonial summary of the landlord's purported breach – all of which was denied by the landlord.

### **Analysis**

The testimony of the tenant and the landlord, clearly, is that the issues advanced by this application are contentious and emotional matters for both, and contribute to an acrimonious relationship.

In respect to the reasons advanced by the landlord on the late payment of rent, there is no evidence that the rent was paid late for June 2011. There is evidence the rent was paid late in July and August 2011. However, Residential Tenancy Policy Guideline #38 states, in part, that, *“Three late payments of rent are the minimum number sufficient to justify a notice under these provisions”*. As a result, the landlord has not provided sufficient evidence to end the tenancy for this reason.

In respect to the reasons advanced by the landlord that the tenant has breached a material term of the tenancy, and not corrected same after receiving written notice to correct the breach, I find the landlord did not provide written notice to address the breach. Further, it should be noted that content insurance is for the benefit of the tenant (tenant’s contents) and not the landlord’s property. As such, while it may be a convenience for the parties in the event the tenant’s contents require remediation, non compliance with this term of the tenancy agreement does not automatically establish the breach as breaching a “material term”. A material term is one the *parties both agreed as so important that the most trivial breach of the term gives the other party the right to end the agreement* – end the tenancy. I find the landlord has not met their onus that the tenant has breached a *material term* of the Tenancy.

As a result of all the above, I find the tenant has come perilously close to losing their tenancy; however, I find the landlord’s 1 Month Notice to End Tenancy for Cause dated August 20, 2011 is not sufficient to end the tenancy and the Notice, therefore, is **set aside and is of no effect**. The landlord is not entitled to an Order of Possession. The landlord is at liberty to issue another Notice to End tenancy for valid and sufficient reasons.

In respect to the tenant’s claim for loss of quiet enjoyment, I find the tenant has not provided sufficient proof of the loss of this right by the tenant. In this matter the burden rests on the claimant (tenant) who must establish, on a balance of probabilities that they have suffered a loss of quiet enjoyment due to the landlord’s conduct, neglect, or failure to comply with the Act. In the absence of sufficient proof, **I dismiss** the tenant’s claim for monetary compensation for loss of quiet enjoyment, with leave to reapply.

As the tenant was successful in their application, the tenant is entitled to recover their filing fee of **\$50**.

**Conclusion**

The tenant's application to set aside the landlord's Notice to End is granted. **I Order** the Notice to End Tenancy for Cause dated August 20, 2011 is null and of no effect, and the tenancy continues.

The landlord is at liberty to issue a *valid* Notice to End.

The tenant's claim for damage and loss **is dismissed**, with leave to reapply.

**I Order** that the tenant **may deduct \$50** from a future rent.

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*.