



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding BOUNDARY MANAGEMENT INC  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47; and
- an order requiring the landlord to comply with the *Act*, regulation or tenancy agreement pursuant to section 62.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. The tenant confirmed that on May 29, 2015, she received the landlord's 1 Month Notice posted on her door that day. The landlord's building manager (the landlord) confirmed that the landlord's representatives were handed a copy of the tenant's dispute resolution hearing package, including notice of this hearing and a copy of the tenant's application for dispute resolution, on June 8, 2015. Both parties confirmed that they received copies of one another's written and photographic evidence. I am satisfied that all of the above documents and evidence were served to one another in accordance with the *Act*.

At the hearing, the tenant brought a number of documents and photographs with her. These documents and photographs were neither entered into evidence by her advocate nor provided to either the Residential Tenancy Branch or the landlord prior to this hearing. I have not considered these materials in reaching my decision.

At the commencement of the hearing, the landlord's representatives requested the issuance of an Order of Possession in the event that the tenant's application to cancel the 1 Month Notice were dismissed.

The tenant's advocate advised that the tenant was not pursuing any order requiring the landlord to abide by the terms of the Residential Tenancy Agreement (the Agreement) or the *Act*. However, during the course of the hearing, it became apparent that both

parties are interested in having an infestation of mice in the rental unit and in parts of the rental property resolved.

Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession? Should any orders be issued with respect to this tenancy?

Background and Evidence

The tenant signed a periodic Agreement on January 26, 2012. Monthly rent is set at \$850.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$425.00 security deposit paid on January 26, 2012.

The landlord's 1 Month Notice, entered into written evidence by the parties, identified the following grounds for ending this tenancy:

*Tenant or a person permitted on the property by the tenant has:*

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;*
- *put the landlord's property at significant risk.*

The first portion of the landlord's attempt to end this tenancy relied chiefly on the tenant's actions and behaviour during an incident that occurred on May 27, 2015. Both parties presented sworn testimony and written evidence regarding this incident.

The landlord testified that the tenant has been verbally abusive to her on many occasions, culminating in the May 27 incident where the tenant's actions placed her, her partner and tenants in the building in serious danger. In her written evidence and sworn testimony, the landlord outlined the events of May 27, when the landlord was attempting to deal with a gasoline leak from the riding mower she was using on the rental property. The landlord noted that this gas leak resulted in her being covered in leaking gasoline, which presented a life-threatening situation for her and a group of tenants who came to watch what was happening. Despite the landlord's warnings to stay back from the leaking gasoline, some tenants remained in the area, some continuing to smoke. Amidst this emergency situation, the tenant chose to pursue her request for additional mousetraps to assist her in her efforts to rid her rental unit of mice. The landlord said that the tenant continued yelling and screaming at her for some time, even though the landlord advised the tenant of the seriousness of the gasoline leak. As the landlord could not let go of the gas lines from the riding mower, she had to call her partner to assist her and ensure that the tenant left the danger zone of the gas leak. The landlord entered written evidence and sworn testimony that her partner positioned herself such

that the tenant would have to take a number of steps backwards to withdraw from the area of the gas leak. She said that throughout this process the tenant continued yelling at her and demanding action regarding the mousetraps and the mice infestation. In her written evidence, she maintained that the tenant pushed her partner during this incident. The landlord also entered into written evidence a signed statement from one of the tenants who was in attendance during part of this incident. The landlord's partner did not attend the hearing, nor did she provide a written statement regarding her actions in de-escalating this situation. The landlord said that neither her partner nor any of the tenants in the building who witnessed these events were willing to come forward as witnesses for this hearing.

The landlord entered into written evidence a copy of a standardly written and apparently generic May 28, 2015 "BREACH LETTER", the day after this incident, which read as follows:

*As the landlord/landlord's agent of the premises noted above, we would like to inform you that your conduct is affecting the safety, welfare, and comfort of the other tenants in the building.*

*As tenant(s) you or your guest(s) shall not disturb, harass, or annoy occupants of the building or neighbours, and shall not cause loud conversation, music, television, or other irritating noise to disturb peaceful enjoyment at any time, and shall maintain quiet between 11:00 pm and 9:00 am.*

*Any misconduct such as the above made after May 28, 2015 will be considered a breach of your tenancy Agreement. Therefore, this will result in a one (1) month Notice to End a Residential tenancy pursuant to Section 36(2(a) and/or (h) of the Residential Tenancy Act.*

The only variation to the standardly worded Breach Letter was the insertion of the May 28, 2015 date on the above letter and the following handwritten addition:

*Your behavior on May 27 outside 807 entrance put my life and lives of others in danger.*

The landlord's other representative at this hearing was familiar with the tenant's history of interaction with the landlord's staff. She said the tenant has been verbally abusive on many occasions. However, the landlord's other representative was not present during the incident of May 27, 2015, and could not provide any first-hand testimony as to what transpired that day.

For her part, the tenant provided a dramatically different account of the incident of May 27, 2015. She said that it was she who felt intimidated and was forced to move back from the landlord by her partner whom she described as a much larger individual. She said that she remained 5 metres back from the landlord at all times as the machine the

landlord was working on continued to run. She testified that she had to use a loud voice to raise her concerns with the landlord to be heard over the noise of the machine. She was concerned about the landlord's decision to refrain from providing her with mousetraps to address the mice infestation in her rental unit. She said that she eventually had to cross her hands across her chest to avoid being pushed back by the landlord's partner. Although she said that there were others who could confirm her account of what happened, she did not provide any statements from them, nor did anyone appear as a witness on her behalf.

The landlord's second reason for issuing the 1 Month Notice centered around the tenant's refusal to allow pest control technicians into her rental unit to inspect and treat her premises. Both of the landlord's representatives gave undisputed sworn testimony that there has been an ongoing problem regarding mice emanating from the tenant's rental unit. Both landlord representatives testified that mice are entering the surrounding rental units in this rental building from the tenant's rental unit. They said that treatment of other rental units around the tenant's have proven unsuccessful because the tenant will not allow pest control technicians access to her rental unit for inspection and treatment.

The landlord's assistant manager testified that the tenant moved into the rental unit with many boxes which likely contained mice. The landlord's assistant manager also testified that she saw bedbugs in the tenant's rental unit on the last occasion when she inspected the rental unit, a short time ago.

The tenant agreed that there has been an ongoing problem with mice throughout her tenancy. She maintained that mice are entering her rental unit, likely through a hole in the wall behind one of her major appliances. She testified that she has caught many mice during her tenancy in mousetraps provided in the past by the landlord. More recently, the landlord refused to provide her with these traps, an issue of major concern to the tenant. She said that her concern about ending this mice infestation has reached the point where she has contacted two provincial government ministries for their advice and support in resolving this matter. She testified that she earnestly wants the landlord to take adequate measures to end the mice infestation. She denied the presence of bedbugs in her rental unit.

#### Analysis

Paragraph 47(1)(d)(ii) and (iii) of the *Act* reads in part 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:...*

*(d) the tenant or a person permitted on the residential property by the tenant has...*

*(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or*

*(iii) put the landlord's property at significant risk;...*

The onus in such cases rests with the landlord to demonstrate that at the time that the 1 Month Notice was issued that there were adequate grounds to issue that Notice and end the tenancy for cause. In this case, the landlord cited two reasons for ending the tenancy.

#### Analysis – Seriously Jeopardized Health or Safety

I have carefully considered the landlord's first claim that the tenancy should be ended on the basis of the tenant jeopardizing the landlord's health and/or safety and the health and safety of other occupants of the rental property. The tenant is an eighty year-old woman who provided a number of statements from her doctors regarding her multiple health conditions. While tenants and landlords should not be verbally abusive to one another, I am not satisfied that the landlord has demonstrated that the events of May 27, 2015, constituted sufficient grounds for the landlord to end this tenancy on the basis of that day's events. This was clearly an unusual sequence of events which led to a potentially dangerous situation that day. However, the absence of any eyewitness accounts by anyone who attended the hearing, other than the landlord and the tenant, make it very difficult to confirm either account of what happened that day and whether the tenant's actions constituted grounds to end her tenancy. While the landlord did provide one statement from a witness, I find this witness statement was not sufficiently detailed and admitted that the witness was not present for the duration of the incident in question. Without this witness in attendance to clarify the comments and to answer questions regarding the statement, I find that the statement adds little value to my understanding of the parties' conflicting accounts of what happened that day.

I also find that the Breach Letter was issued the day **after** the incident, putting the tenant on alert that **future** incidents of this nature could lead to the issuance of a 1 Month Notice for Cause. As noted above, most of this Breach Letter is a pre-formatted generic letter that appears to have very little relevance to the issues identified by the landlord's representatives as the grounds for seeking an end to this tenancy for cause. A tenant receiving such a letter noting concerns about after hours noise and playing music would not have any real sense of whether the generic issues cited in the Breach

Letter had any real bearing on their tenancy, when such issues are not in dispute in this tenancy. This type of generic Breach Letter is of little use in the current context. A breach letter needs to clearly identify the issues of concern which could lead to an end to a tenancy for cause so as to inform the tenant as to the corrective action which needs to occur in order to avoid the issuance of a 1 Month Notice. The only specific information tailored to this tenancy was the handwritten statement alleging that the tenant's actions on May 27, put the landlord's life at risk and those of others in the rental property. Separate from whether this was indeed the case, the landlord testified that no further incidents of this nature occurred following the issuance of the Breach Letter. However, the landlord chose to issue a 1 Month Notice the following day on May 29, 2015. I find the sequencing of the incident, the issuance of the Breach Letter the following day, and the issuance of the 1 Month Notice another day later is most inadequate. As no events of this nature occurred after the Breach Letter was issued, the tenant was not in contravention of even the unclear generic terms outlined in the Breach Letter on May 29, 2015.

With or without a breach letter, a landlord can issue a 1 Month Notice if a tenant's actions have so jeopardized a landlord's safety or those of other occupants of the building such that the tenancy should not continue. In this regard, I find the landlord's application very deficient. No doubt a stressful situation occurred on May 27, 2015, which was not aided by the tenant's actions. Nevertheless, it is difficult to imagine a similar emergency of this nature occurring in the future. Tenants smoking in the area of a gas leak would seem to be a far more life-threatening issue than the tenant's refusal to pursue her concerns with the landlord at some other time.

For the reasons outlined above, I allow the tenant's application to cancel the 1 Month Notice for this item.

#### Analysis – Property at Significant Risk

I heard conflicting evidence with respect to the source of the mice infestation and whether bedbugs are present in the rental unit. The landlords testified that the tenant brought the mice into this building. Their written evidence also contained a letter from another tenant who maintained that the tenant routinely leaves her door open, allowing mice to enter her rental unit. The tenant and her advocate denied that the tenant was the source of the problem, noting that the mice infestation affects many rental units in her building. The tenant's advocate questioned how the landlord's representatives could be certain that the tenant was the original source of the mice infestation. The landlord's representatives claimed that bedbug spraying in other rental units cannot be

successful until the tenant's rental unit is treated. The tenant denies that she has bedbugs on her premises.

I also heard conflicting evidence with respect to the circumstances surrounding a visit that was to have been conducted by the company that provides pest control services to the landlord in this rental building. The landlord testified that arrangements were made with the tenant to have pest control technicians inspect the tenant's rental unit on April 17, 2015. The tenant testified that she was unaware that pest control staff were planning to attend her rental unit at 10:00 a.m. The tenant said that she thought that repair staff were to be attending her rental unit between 9:00 a.m. and 3:00 p.m. that day. The landlord testified that she saw the tenant in the building shortly before the scheduled 10:00 a.m. inspection. When the technician arrived a few minutes later, there was no answer when the technician and the landlord knocked on the tenant's door. The tenant maintained that she was in the rental unit the entire day waiting for maintenance to be undertaken on her rental unit, but for a five minute period when she took garbage outside. She said that the landlord is taking these actions to try to evict her because she speaks up for her rights and makes requests for proper service from the landlord.

Although the landlord's representatives said that the tenant has routinely circumvented the landlord's attempts to inspect the tenant's rental unit and allow for pest control treatment, the only specific example they provided related to the April 17, 2015 incident. As outlined above, the parties gave conflicting testimony. Neither party provided supporting testimony or evidence from third parties to confirm their account of what transpired that day leading to the failure of the pest control company to inspect the rental unit as requested. Without such corroborating evidence, either account could be accurate. A single failure to be available when maintenance/inspection or pest control treatment was scheduled would not be sufficient to enable a landlord to end a tenancy for cause on the basis of the tenant's actions having placed the landlord's property at significant risk. The landlord and other tenants may find a pest infestation annoying and disturbing; however, the landlord has not established that the landlord's property has been placed at significant risk by the tenant's failure to remain at her rental unit at an appointed time. After reviewing the evidence presented and on a balance of probabilities, I find that this single disputed incident does not meet the test required to enable a landlord to end a tenancy for cause on the basis of the tenant's action having placed the property at significant risk. For these reasons, I also allow the tenant's application to cancel the landlord's 1 Month Notice as the landlord has not demonstrated to the extent required that the tenant's actions have placed the landlord's property at significant risk.

I also find that the parties are in agreement that the landlord should be taking effective measures to address the pest control concerns regarding this rental unit. Pest control treatment is important. Failure to attend to the landlord's concerns about pests, including bedbugs, could cause problems for other tenants in the building.

Since both parties agreed that pest control is necessary in this rental unit and in accordance with the powers delegated to me under section 62(3) of the *Act*, I order the tenant to allow the landlord and the landlord's pest control provider to access her rental unit to inspect and if necessary treat the rental unit for pests (including mice and bedbugs) upon the landlord providing the tenant 24 hours written notice posted on the tenant's door or handed to the tenant. I also order the tenant to comply with whatever reasonable instructions are provided by the landlord's pest control technicians to ensure that the pest control treatment, including treatment for mice and bedbugs if necessary, has the optimal chance for success. In making this order, I note that a successful pest control program may require a number of inspections and treatments before the pest problem is resolved.

#### Conclusion

I allow the tenant's application to cancel the landlord's 1 Month Notice, with the effect that the landlord's 1 Month Notice is of no continuing force or effect.

I order the tenant to allow the landlord and the landlord's pest control provider to access her rental unit to inspect and if necessary treat the rental unit for pests (including mice and bedbugs) upon the landlord providing the tenant with 24 hours written notice posted on the tenant's door or handed to the tenant. I also order the tenant to comply with whatever reasonable instructions are provided by the landlord's pest control technicians to ensure that the pest control treatment has the optimal chance for success.

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: July 30, 2015



