



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GY & S ENTERPRISES LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, FF

### 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 authorization to recover the filing fee for this application from the landlord pursuant to section 72

Both parties attended the hearing and were given an opportunity to present evidence and make submissions. The tenant confirmed receipt of a 1 Month Notice to End Tenancy for Cause on July 22, 2015. The landlord confirmed receipt of the tenant's Application for Dispute Resolution hearing package on August 19, 2015. I accept that the tenant was duly served with the 1 Month Notice and the tenant's Application for Dispute Resolution hearing package filed in response to that notice was sufficiently served to the landlord.

On receipt of a 1 Month Notice to End Tenancy, a tenant has 10 days to apply to dispute the notice. The tenant applied for dispute resolution the following day after receipt, on July 23, 2015.

At this hearing, the landlord made an oral application for an order of possession if the tenant is not successful in her application to cancel the notice to end tenancy.

### Issue(s) to be Decided

Should the landlord's 1 Month Notice be cancelled?

If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for this application from the landlord?

### Background and Evidence

While I have turned my mind to all the documentary evidence submitted by the parties, I have only reproduced in this decision the evidence that is directly relevant to this application. The principal aspects of the tenant's application, the landlord's position with respect to ending this tenancy and my findings around each are set out below.

Both parties testified that this tenancy began on November 1, 1997 and that the current rental amount is \$802.00 payable on the first of each month. The landlord testified that she continued to hold the security deposit paid by the tenant at the outset of this tenancy.

The tenant applied to cancel the landlord's 1 Month Notice for Cause, disputing that the landlord had sufficient reason, or cause to end the tenancy. The landlord made an oral application for an Order of Possession based on her 1 Month Notice to End Tenancy. That 1 Month Notice indicated that "the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord".

The landlord testified that other tenants have complained about the tenant, indicating that items from her balcony have fallen below to their balconies. The landlord did not submit any written complaints from other tenants nor did she provide any specific examples. In her testimony, it appeared she was referring to the tenant watering plants on her balcony and that water dripping below.

The landlord also testified that the tenant has a washing machine hooked up in her suite, contrary to the rules of the building. She testified that she does not believe that this washing machine is safe hooked up in the tenant's residence and that it is adversely affecting the plumbing in the building. The landlord provided no documentation of repair invoices, expert opinion or testimonial evidence to support her position.

The landlord testified that she had telephoned the tenant within the last year on at least one occasion to tell her that there were complaints about her. On further testimony, the landlord submitted that it may have been in relation to the washing machine that she contacted the tenant.

The tenant provided undisputed testimony that she had not received a written warning or notice of a complaint from the landlord since 2012. She submitted a copy of that letter of complaint. The landlord acknowledged that she had provided a letter of complaint to the tenant in 2012 and that she may not have provided a letter of complaint or warning to the tenant since that date.

The landlord testified that the tenant does not answer her door or the telephone when the landlord tries to contact her. She emphasized that other tenants are bothered by the tenant. The landlord made an oral request for an order of possession if the tenant fails in her application to cancel the 1 Month Notice.

### Analysis

When a tenant applies to cancel a notice to end tenancy, the burden shifts to the landlord to justify the notice issued. The tenant entered into written evidence a copy of the 1 Month Notice to End Tenancy for Cause. In that Notice, requiring the tenant to end this tenancy by August 31, 2015, the landlord cited the following reasons for the issuance of the Notice:

*Tenant has engaged in illegal activity that has, or is likely to:*

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*

While the landlord claimed, with no supporting evidence that the tenant has affected the quiet enjoyment and safety of other occupants within the rental premises, the landlord submitted no evidence and provided no testimony to support the proposition that this interference has been as a result of illegal activity by the tenant. The landlord argued, when questioned, that the tenant's use of an unauthorized washing machine is tantamount to illegal activity.

Residential Tenancy Policy Guideline No. 32 provides guidance with respect to reference to "illegal activity" to end tenancy.

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property....

**The party alleging the illegal activity has the burden of proving that the activity was illegal.**

...

The illegal activity must have some effect on the tenancy. ...

**(Emphasis added)**

Based on the evidence of both parties, I am not satisfied that the landlord had sufficient grounds to issue the 1 Month Notice and obtain an end to this tenancy for cause. The landlord has provided no evidence, even testimonial to show that the tenant has violated a law and that the violation impacted this tenancy. To the contrary, the landlord's testimony makes no reference to illegal activity but merely activity that may or may not be considered annoying.

The tenant made application pursuant to section 47(4) of the *Act* within ten days of receiving the 1 Month Notice. I find that the 1 Month Notice should be cancelled in all of the circumstances. I decline the landlord's request for an Order of Possession.

As the tenant was successful in her application, I find the tenant entitled to recover the \$50.00 filing fee for this application from the landlord.

### Conclusion

I grant the tenant's application to cancel the 1 Month Notice to End Tenancy. The 1 Month Notice is cancelled and the tenancy shall continue.

I issue a monetary order in the amount of \$50.00 in favour of the tenant.

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: September 10, 2015

---

Residential Tenancy Branch

