



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNC, MNSD

### Introduction

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

- cancellation of a 1 Month Notice to End Tenancy For Cause ("1 Month Notice"), pursuant to section 47; and
- a monetary order for return of a security deposit, pursuant to section 38.

The tenant, her assistant HG (the "assistant") and landlord attended the hearing and were each given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord confirmed receipt of the tenant's application ("Application") for dispute resolution package. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the Application.

### Preliminary Issue – Excluded Witness Statement in Landlord Evidence

The landlord testified that the evidence package served to the tenant did not contain one witness statement that was included in the evidence package to the Residential Tenancy Branch. The tenant acknowledged receipt of the evidence package from the landlord. Because the tenant did not receive the excluded witness statement, I have not relied on the excluded witness statement to form any part of my decision.

### Issue(s) to be Decided

Is the tenant entitled to have the landlord's 1 Month Notice cancelled? If not, is the landlord entitled to an order of possession?

Is the tenant entitled to a monetary order for return of a security deposit?

### Background and Evidence

As per the written tenancy agreement and the parties' testimony, this tenancy began on January 1, 2016 on a fixed term tenancy until December 31, 2016. Rent in the amount of \$800.00 is

payable on the first of each month. The tenant remitted \$400.00 for the security deposit at the start of the tenancy. The tenant continues to reside in the rental unit.

The tenant acknowledged receipt of the landlords 1 Month Notice dated May 26, 2016 by way of posting to her rental unit door. The reason cited in that 1 Month Notice was that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord. In accordance with sections 88 and 90 of the *Act*, I find that the tenant was duly served with the landlord's 1 Month Notice.

The landlord testified that the tenant was not forthcoming about her boyfriend's previous residence and the landlord unknowingly allowed his occupancy. Specifically the landlord testified that the building is designated as crime free and the tenant's boyfriend came directly from jail. The landlord testified that following the tenant's boyfriend's arrival, the landlord began receiving complaints from other renters regarding suspicious activity in the parking lot at night and break ins of parked vehicles. The landlord testified that upon inspection of the tenant's rental unit for a separate issue related to water damage, she and another renter ("Renter RM") observed car parts in the rental unit. A witness statement from Renter RM indicates he observed boxes full of car stereos in one of the closets during this inspection, and on another occasion Renter RM directly observed car tires being moved out the back door of the tenant's rental unit and quickly put into a running waiting truck. The landlord has submitted other witness statements from other renters that reiterate seeing the tenant's boyfriend late at night in the parking lot, sometimes with a car trunk open and other times these witnesses have observed him on the rental unit deck spray painting bike parts. The landlord testified that the tenant above the tenant's rental unit has engaged in a verbal altercation with the tenant's boyfriend and another tenant has vacated the premises as a result of the tenant's boyfriend. Lastly, the landlord testified that she has been personally disturbed when she has had to escort the police to the tenant's rental unit to perform curfew checks on the tenant's boyfriend.

The tenant testified that she did not sign an addendum stating the residence was crime free. Further, she gave the landlord the identification of her boyfriend when requested. The tenant testified that her boyfriend smokes and as he is not permitted to smoke in the rental unit, he smokes in the parking lot and may wander the lot during this time. The tenant testified that the car stereos the landlord observed were from her mother's house and the tenant's boyfriend was working on them. Her boyfriend works on car parts and stereos to earn money. The tenant acknowledged her boyfriend engaged in a verbal altercation with the upstairs renter. The tenant testified that the landlord was only disturbed once by the police curfew check in February of 2016 and since that time the police have conducted the curfew checks without the assistance of the landlord.

### Analysis

Under section 47 of the *Act*, a landlord may end a tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property and seriously jeopardized the health or safety or lawful right of another occupant or the landlord. The onus is on the landlord to prove the significant interference or unreasonable disturbance or jeopardized health and safety took place by the tenant or person permitted on the property by the tenant. The landlord provided evidence in the form of witness statements and testimony regarding the tenant's boyfriend's behaviour that led to the 1 Month Notice being issued.

Although the witness statements and testimony of the landlord allude to suspicious activity that could significantly interfere with another occupant or the landlord, there is insufficient evidence to show the boyfriend's current behaviour did interfere, disturb or jeopardize the health and safety of another occupant. The observations recorded in the witness statements are observations of suspected illegal activity. The witness statements do not reveal how the boyfriend's behaviour has directly affected each witness. One verbal altercation and one instance of the landlord having to escort the police do not constitute a significant inference, disturbance or jeopardized safety. I find the landlord has not met the burden of proof and accordingly, I uphold the tenant's application to cancel the 1 Month Notice.

The tenant's application to the return of her security deposit is premature as she has not vacated the rental unit. For this reason, this portion of the tenant's application is dismissed with leave to reapply.

### Conclusion

The tenant's application to cancel the 1 Month Notice is upheld.

The tenant's application to the return of her security deposit is dismissed with leave to reapply.

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 04, 2016

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Residential Tenancy Branch

