



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Oceanmist Apts  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      DRI, CNC, RR, FF

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking to cancel a notice to end tenancy; to dispute an additional rent increase; and a rent reduction.

The hearing was conducted via teleconference and was attended by the tenant her support and an agent for the landlord.

I note the tenant named the onsite caretaker (GB) and owner (TK) as the landlord respondents in her Application for Dispute Resolution. However, I also note the tenancy agreement and 1 Month Notice name the landlord as Oceanmist Apartments, as such I amend the tenant's Application to be against the landlord as identified in the tenancy agreement.

Residential Tenancy Branch Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claim regarding the 1 Month Notice to End Tenancy for Cause and the continuation of this tenancy is not sufficiently related to the tenant's claim to dispute a rent increase and for a rent reduction. The parties were given a priority hearing date in order to address the question of the validity of the Notice to End Tenancy.

The tenant's other claims are unrelated in that the basis for them rests largely on facts not germane to the question of whether there are facts which establish the grounds for ending this tenancy as set out in the 1 Month Notice. I exercise my discretion to dismiss the tenant's claims to dispute a rent increase and for a rent reduction. I grant the tenant leave to re-apply for these other claims.

I note that Section 55 of the *Residential Tenancy Act (Act)* requires that when a tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a landlord I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to cancel a 1 Month Notice to End Tenancy for Cause and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 47, 67, and 72 of the Act.

Should the tenant be unsuccessful in seeking to cancel the 1 Month Notice to End Tenancy for Cause it must also be decided if the landlord is entitled to an order of possession pursuant to Section 55(1) of the Act.

### Background and Evidence

The tenant submitted into evidence the following relevant documents:

- A copy of a tenancy agreement signed by the parties on June 1, 2015 for a 6 month fixed term tenancy beginning on June 1, 2015 that converted to a month to month tenancy on December 1, 2015 for a monthly rent of \$900.00 due on the 1<sup>st</sup> of each month with a security deposit of \$450.00 and a pet damage deposit of \$450.00 paid;
- A copy of a Notice of Rent Increase dated January 25, 2016 stating the rent will increase to \$925.00 effective June 1, 2016; and
- A copy of 1 Month Notice to End Tenancy for Cause issued by the landlord on July 22, 2016 with an effective vacancy date of August 31, 2016 citing the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

I note the 1 Month Notice included a written detail of the cause that included an attached page. The landlord wrote: "Interfering with landlords rights under the terms of the Residential Act. There has been ongoing issues with this tenant in regards to the tenant harassing, threatening and bullying office staff, administrative staff in the form of letters phone calls and emails. Also physically assaulting the building manager as the attempt was made to access the apartment because of a emergency that was taking part and could or would put the property at significant risk, and also affect all other tenant's in the building. Authorities were contacted, and did arrive at building to deal with this issue." [reproduced as written].

The landlord submitted that on July 21, 2016 he received a call from a local plumbing company who informed him that they had received a call from the tenant about a water problem in her unit. He stated that went over immediately and when he arrived the tenant refused him entry and that she physically assaulted him by pushing him out of the unit into the hallway. He states that by refusing him entry she prevented him from dealing with the emergency so he went and turned off the water to the building. He

states that he cancelled the plumbing company the tenant had engaged and contacted his own plumber who attended the property within an hour.

The landlord also stated that he had called the police to attend after the tenant shoved him out of the rental unit and asked them to stay when he sent the plumber into the unit. The plumber entered the unit and repaired the problem.

The landlord also submits that the tenant has been harassing staff by sending letters; emails; and phone calls regarding complaints about the property and the property manager. The landlord submits that the tone of these interactions is harassing; bullying and condescending.

The tenant states that on the morning of July 21, 2016 the bathtub faucet blew off with high pressure water spilling following it. She states she tried to minimize any damage by trying to hold the faucet in place.

The tenant submits that in the past she has not been able to get ahold of the onsite manager, because he does not answer his phone; that the landlord does not have an emergency contact number posted anywhere; and she has been instructed from the property management company that she is not supposed to contact the onsite manager so when the bathtub problem arose she contacted the plumbing company directly.

The tenant states that she heard a knock at the door and thought it was the plumbing company but that she was not properly dressed and her two pit-bulls were not secured. She states the landlord attempted to enter the unit and she acknowledges she refused him entry to the unit so that she could be more appropriately dressed and she could secure her dogs.

The tenant submits that she has had difficulty with the onsite manager since she moved in to the rental unit and that most often requests for repairs have gone unheeded. She states that when she first started contacting the property management company by phone they indicated that they were quite concerned with her complaints and she was told to deal directly with one person at the office and that she should not contact the onsite manager again.

The tenant submitted that despite sending a number of complaints from to the property management company the landlord still will most often not respond and they have never told her that she needed to stop sending her complaints into them at all.

### Analysis

Section 47 of the *Act* allows a landlord to end a tenancy by giving notice to end the tenancy if, among other things, 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, seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or put the landlord's property at significant risk.

In regard to the landlord's assertion that the tenant has been harassing, threatening and bullying staff by letters, phone calls, and email I find a tenant has a right to seek the landlord to take action for repairs; to complain if repairs are not made (when they are legitimately required); and to complain to the management if they are unhappy with the onsite management of the residential property.

To say that by doing so the tenant may be seen as threatening or harassing to the point where the tenancy should be ended would take away that right. Upon review of the submissions of both parties, I accept that the tone of some of the tenant's letters and emails may not sit well with someone who receives them. However, I also note that the landlord has provided no copies of any responses from the landlord to any of these complaints. I find it would be reasonable for the tenant to become more and more frustrated if no one was even acknowledging their concerns.

As such, I find the landlord has failed to justify this as a cause to end the tenancy.

Section 29(1) of the *Act* stipulates that a landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless the tenant gives permission at the time of entry; at least 24 hours and not more than 30 days before the entry the landlord gives the tenant written notice that includes the purpose for entering, which must be reasonable and the date and time of entry; the landlord has an order from the director authorizing the entry; the tenant has abandoned the rental unit; or an emergency exists and the entry is necessary to protect life or property.

In relation to the incident of July 21, 2016, while I accept that the landlord had the right to enter the rental unit pursuant to Section 29(1) as an emergency existed that was threatening the property, I find that it was reasonable for the tenant to prevent the landlord from entering until she had secured her dogs and was dressed appropriately.

I also find that the landlord had an alternative available to him that did allow him to shut off the water that could have potentially caused damage within, as per his own testimony, 3 or 4 minutes and therefore end the emergency need. As such, I find the tenant's actions did not constitute a significant risk to the property.

In addition, from the testimony of both parties I am not satisfied, on a balance of probabilities that the tenant's actions constituted an assault.

For these reasons, I find the landlord has failed to establish any cause to end the tenancy.

### Conclusion

Based on the above, I grant the tenant's Application and cancel the 1 Month Notice to End Tenancy for Cause issued on July 22, 2016 and order that the tenancy remains in full force and effect.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of the fee paid by the tenant for this application. I order the tenant may reduce a future rent payment in this amount to satisfy the award, pursuant to Section 72(2)(a) of the *Act*.

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 21, 2016

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Residential Tenancy Branch