



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OPC, MNDC, FF

### Introduction

This hearing was convened to deal with applications by the landlord and the tenants pursuant to the *Residential Tenancy Act* (the “Act”). Both applications are based on a 1 Month Notice to End Tenancy for Cause dated January 11, 2017 (the “1 Month Notice”).

The tenants’ application, dated January 20, 2017, seeks an order cancelling the 1 Month Notice and return of the filing fee.

The landlord’s application, dated January 31, 2017, is for an order of possession and recovery of the application filing fee.

Service of the parties’ respective applications and associated evidence was not at issue.

Both tenants attended the hearing. The landlord attended with his daughter and two witnesses. Both parties had full opportunity to be heard, to present affirmed testimony, to make submissions, to present documentary evidence, and to respond to the submissions of the other party.

### Preliminary matters

The 1 Month Notice alleges “cause” under s. 47(1)(e). Specifically, it alleges that the tenant has engaged in illegal activity that has or is likely to “damage the landlord’s property” or “adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.” At the outset of the hearing the landlord’s daughter stated that she may have checked the wrong box on the 1 Month Notice. I considered amending the 1 Month Notice to allege cause under s. 47(1)(d) of the Act, which does not require illegal activity, but only requires conduct by the tenant that has “(i) significantly interfered with or unreasonably disturbed another occupant or the landlord, (ii) seriously

jeopardized the health or safety or lawful right of the occupant, or (iii) put the landlord's property at significant risk.”

However, the tenants were opposed to allowing this amendment and submitted that they had spent considerable time and effort responding to the allegation of cause that were in fact made. Accordingly, I have chosen not to amend the landlord's 1 Month Notice. As will be clear from my analysis below, it is unlikely that the landlord would have been successful even if I had amended the 1 Month Notice.

Although the hearing went 30 minutes over the allotted time, the landlord did not have an opportunity to address his claim for compensation for loss or damages. Rule 2.3 of the Residential Tenancy Branch Rules of Procedure authorizes me to dismiss unrelated disputes contained in a single application. In these circumstances the more urgent of the landlord's applications is the application to end the tenancy. Accordingly, I have considered only that application by the landlord, and I dismiss the landlord's application for monetary compensation with leave to reapply.

#### Issue(s) to be Decided

Is the tenant entitled to an order cancelling the 1 Month Notice?

Is the landlord entitled to an order of possession based on the 1 Month Notice?

Are either of the parties entitled to return of the application filing fee?

#### Background and Evidence

There was no written tenancy agreement in evidence. It was agreed that the tenancy began on June 15, 2016 as a month to month tenancy, with a monthly rent of \$1,000.00 due on the first of the month. Security and pet damage deposits of \$500.00 each were made and are still held by the landlord.

Both landlord and tenants agree that the tenants were served with the 1 Month Notice on January 11, 2017. As set out above, the 1 Month Notice alleges “cause” under s. 47(1)(e). It alleges that the tenant or a person permitted on the property by the tenant has engaged in “illegal activity that has, or is likely to (i) damage the landlord's property or (ii) adversely affect the quiet enjoyment, security, safety, or physical well-being of another occupant.” In the “details” section of the 1 Month Notice the landlord has written: “The tenant has continuously left the gates on the property open causing one to break at the latch. I as the landlord I fear that due to his lack of care for keeping the

gate closed my dog could get out and get hurt. The tenant has been informed of those concerns but continues to leave it open. The tenant has also without permission has made a copy of the mail key” (reproduced as written).

Both parties testified that the relationship between the tenants and the landlord and his daughter deteriorated after disagreements around the mail key and around the closing of and/or damage to a gate to the shared residence.

The tenants provided photographs of the mailbox at the residential unit, which includes slots for several suites, including the landlord's, all of which are accessed by one master key. The parties agreed there was only one key to the mailbox that services four suites in the same large residence. There were copies of text messages between the tenants and the landlord in evidence around obtaining or returning the key. The tenants also gave evidence that the landlord has on one occasion demanded that they return home immediately to open the mail for him. The male tenant also testified that access to their own mail is important for them because they are waiting on important news with respect to schooling for one of their disabled children. The landlord alleged that the tenants copied the mail key without authorization to do so. The tenants say that they have not done so and still do not have their own mail key. A copy of a text exchange in evidence from the landlord suggests the tenant has copied the mail key.

The tenants also provided photos of the gates surrounding the residence, including photos of a broken latch. The tenants say the latch broke during a windstorm, as a result of the piece rubbing on the frame. Other photos show two other gates that keep the landlord's dog from leaving the yard. These are in addition to the gate with the broken latch. Correspondence between the parties with respect to the gates was also in evidence. The landlord alleges that the tenant does not wish to keep a particular gate closed because it is at the top of stairs and if his children climb on it to open it they may fall.

#### *Conversation about gate*

In early December the landlord's daughter went down to the tenants' unit to remind them to keep one of the gates closed. She stated that the male tenant was angered by this reminder and stated that he did not appreciate being accused of having broken the gate. The daughter says that she reiterated that she was only there to remind the tenants to keep the gate closed. She says that the tenant called the landlord's character, and his relationship with his wife, into question and he was “hyper” and “aggressive.” The landlord himself then went down to speak to the tenant.

A neighbour in the same building, TD, was called as a witness to this conversation. She testified that she overheard the conversation between the tenant and the landlord, but not the conversation between the tenant and the landlord's daughter and that the conversation she heard was heated. TD said she finds the tenant "scary" and she hears anger in his voice. Over the course of her tenancy she has overheard a conversation in which he sounded angry twice.

The male tenant agreed that he became angry with the landlord's daughter when she came to speak with him about the gate. He admitted that he told her he was "f-ing tired" of the gate issue. He did raise the issue of her parents with the daughter because he had earlier been "dragged upstairs" by the landlord and involved in a conflict between the landlord and his wife. The male tenant also said that after the landlord's daughter left the landlord came down and "banged on his door" and that there have been other instances where the landlord has yelled at the tenants, threatened to evict them illegally, and threatened physical harm. After the landlord had come down, he and the tenant figured out that the daughter and the landlord had been speaking about different gates.

Although I did not understand the landlord to have alleged that the male tenant threatened physical harm, I asked the male tenant if he had ever threatened to physically harm the landlord or his family or another occupant. The male tenant acknowledged that he is angry and frustrated by the conflicts that have arisen over the gate and the mailbox, but stated that he had not threatened anyone. He stated that the only threat he has ever made was to call the police with respect to other neighbours on the block.

The male tenant further testified that he and the female tenant have children, one of whom is disabled, and the tenants have deliberately kept "a fair amount" of distance between themselves and the landlord, who is himself "very threatening" and "in your face." The female tenant stated that the only interaction that has become heated was an interaction between her partner and another neighbour on the block. She further testified the male tenant has not gotten into anyone's physical space and that her children are scared of the landlord.

The tenants also stated that the landlord's daughter had advised that they were having family move in to the tenants' unit. The daughter admitted that she said as much, but stated that she did so only in an attempt to raise the issue of the tenants' leaving, as they had advised they wished to end the tenancy as a result of the conflicts but had not given notice of a specific date. She stated that she had told the tenants that they would be having family move into the unit as an "excuse."

*Service of the 1 Month Notice*

A second interaction between the landlord's daughter and the male tenant was discussed. The daughter testified that when she served him personally in the early evening with the 1 Month Notice the male tenant swore and became "aggressive." She testified that he shook his hand at her as though he were going to attack her, used the "f" word and called the landlords assholes. A copy of a letter from the landlord's relation, who was also present, was in evidence. It states that the 1 Month Notice was accepted by the male tenant, "but [the tenant] used some abusive language at the time, but I and [landlord's daughter] were able to deliver the notice in a respectable manner."

In response the male tenant testified that the landlord served him at 9:00 pm, and that after he reviewed the 1 Month Notice he reopened his front door, at which point the daughter had already started up the stairs, so that she was not physically close to him, and called out that the notice would have to be redone. He admits he called the landlord an asshole.

*Service of the tenants' evidence*

The landlord testified that when the male tenant dropped off his electronic evidence he was rude with the landlord's other daughter, who is ill. The landlord stated that he was away from home at the time but the tenant would not let the conversation with the ill daughter alone and instead pushed on the door. He would like the tenant to speak with him directly and not go to his children. He also stated that the tenant is on painkillers that make him "hyper."

The male tenant in response stated that he did not push the door open and in fact was below the landlord's daughter, speaking to her from downstairs.

The landlord wished to conference in another witness to speak anonymously about the tenant. That witness was not a tenant or occupant but a neighbour on the residential block. I advised that I would not give much weight to an anonymous witness' testimony and because she was not an occupant in the same building her sense of the tenant or their interactions was less relevant. The landlord chose not to call that witness. Nor was NH called.

The landlord's witness, TD, also gave evidence that at one point she attempted to speak with the male tenant about an issue and that he became "aggressive." I asked her to describe for me what about the tenant's response was "aggressive" and she replaced that descriptor with "escalated."

Both landlord and tenants agree that the tenancy should end. However, the tenants stated that they must first save up the money to pay for movers as they are disabled and not able to move themselves.

### Analysis

Section 47(1) of the Act allows a landlord to end a tenancy for certain types of “cause.” Unless the tenant agrees that the tenancy will end, the tenant must dispute a notice received under this section by filing an application within 10 days of receipt. In this case, the tenants received the 1 Month Notice on January 11, 2017, and applied to dispute it on January 20, 2017 and are therefore within the timeline.

Once a tenant disputes a notice, the burden of proof is on the landlord on a balance of probabilities to establish the cause alleged. This landlord has not established on a balance of probabilities that there is cause to end the tenancy under s. 47(e) of the Act. The landlord alleges that the tenants have left a gate open which has caused the hinge on the gate to break, and that the landlord’s dog may escape. The landlord also alleges that the tenants copied the mailbox key without permission. The tenants may have copied a mail key. They may have left a gate open, which may have caused the latch to break. Regardless, none of these allegations concern “illegal activity” and the landlord has not submitted any evidence of illegality. In fact, the landlord must provide the tenants with access to their mailbox and should have given them a key. If the landlord is concerned about the ability of the tenants to access the landlord’s mail, the landlord should have separately locked mailboxes for each tenant.

Nor has the landlord established that the male tenant has assaulted or threatened or otherwise interfered with another occupant in a manner that is illegal. It is clear that the relationship between the tenants and the landlords is tense and that the parties are frustrated with one another. The male tenant speaks rapidly and his manner may be somewhat unpleasant. He has used some profanity when speaking with the landlords and he has spoken angrily. However, this is not sufficient to find that illegal activity has occurred.

Residential Tenancy Branch Policy Guideline #32 clarifies the meaning of “illegal activity”: the term includes a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. The party alleging illegal activity has the burden of proving that the activity was illegal, and should be prepared to provide a copy of the relevant statute or bylaw. Once illegality has been established,

the landlord must also establish that the activity is sufficiently serious to warrant terminate the tenancy.

I also note that two of the three interactions relied on by the landlord to establish cause occurred at or after service of the 1 Month Notice. Although I can consider conduct occurring after the landlord issued the 1 Month Notice where it is a continuation of previous conduct, in these circumstances the issuance of the 1 Month Notice appears to have heightened the tensions between the parties.

Although I do not make any findings or decisions as to whether the tenants have breached s. 47(1)(d) of the Act, it seems unlikely that they have. An open and/or broken gate, copying a mail key, and the interactions detailed by the landlord, two of which occurred at or after service of the 1 Month Notice, are probably not sufficient to meet the threshold for significant or unreasonable disturbance of or serious jeopardy to the health or safety or lawful right of the landlord or another occupant.

In summary, I find that the landlord has not met the burden of proof to show that the tenant has engaged in illegal activity that has or is likely to (i) damage the landlord's property or (ii) adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.

The tenants' application is therefore allowed and the landlord's application for an order of possession is dismissed.

As the tenants are successful I grant them the return of their application filing fee in the amount of \$100.00 and authorize them to withhold this amount from a future month's rent pursuant to s. 72 of the Act.

### Conclusion

The tenants' application to cancel the 1 Month Notice is allowed. The landlord's 1 Month Notice is cancelled. The tenancy will continue until ended in accordance with the Act and the tenants are authorized to withhold \$100.00 from a future month's rent in order to recover cost of the filing fee.

The landlord's application for an order of possession is dismissed without leave to reapply.

The landlord's application for compensation for losses incurred is dismissed with leave to reapply.

I order the landlord to immediately provide the tenants with their own copy of the key to the mailbox. The mailbox is a common area for all occupants of the building and s. 28 of the Act requires that all occupants be allowed to access it.

Both landlord and tenants are cautioned that further deterioration of their communication can result in the termination of the tenancy by either party. A deterioration could also result in criminal charges. The landlord is at liberty to bring another application to end the tenancy at any time. The parties are also at liberty to reach their own agreement to mutually end the tenancy. The parties may wish to communicate only in writing until the tenants have vacated the rental unit.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the Act. Pursuant to s. 77 of the Act, a decision or an order is final and binding, except as otherwise provided in the Act.

Dated: February 20, 2017

---

Residential Tenancy Branch