



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes            CNC

### Introduction

This hearing dealt with the tenants' 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.

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 landlord's agent, one of the landlord's son's, and Tenant RW (the tenant) confirmed that they had full authority to represent the interests of the landlord and tenants, respectively.

The tenant confirmed that the tenants received the landlord's 1 Month Notice posted on their door on July 26, 2017. I find the tenants were duly served with this Notice in accordance with section 88 of the *Act*.

The landlord's agent (the landlord) confirmed that the landlord received the tenants' dispute resolution hearing package on or about August 2 or 3, 2017. I find that the landlord was duly served with this package in accordance with section 89 of the *Act*.

The tenant confirmed that the tenants received the landlord's written and digital evidence handed to the tenants on October 8, 2017 by the landlord's agent. Although this evidence was not served to the tenants in accordance with the time frames established under the Residential Tenancy Branch's Rules of Procedure, I agreed to consider this evidence, as the tenant said that the tenants had reviewed this evidence in sufficient time to adequately prepare for this hearing. As the tenants have not been unduly prejudiced by the landlord's late submission of evidence, I consider the tenants duly served with the landlord's evidence in accordance with section 88 of the *Act*.

### 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?

### Background and Evidence

This periodic tenancy for the upper rental unit in a two residential unit home began in February 2015. Monthly rent is set at \$1,200.00, payable in advance on the first of each month. The tenants are responsible for one-half of the utility charges for this rental property.

The landlord entered into written evidence a copy of his July 26, 2017 1 Month Notice. In that Notice, requiring the tenants to end this tenancy by August 31, 2017, the landlord cited the following reasons for the issuance of the Notice:

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

- *significantly interfered with or unreasonably disturbed another occupant or the landlord;*
- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord;...*

*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's written evidence and his sworn testimony focussed on a July 8, 2017 incident involving the tenant who resides in the lower rental unit in this dwelling (KG), her brother and her male friend who resides with KG. The landlord testified that there have been ongoing disputes between the tenants in this rental property for some time. He said that these arguments have led to the issuance of verbal warnings to the two tenants in the upper rental unit, but no written warnings were provided prior to the July 8, 2017. He said that he was unaware of any problems since the July 8, 2017 incident, and the landlord's issuance of the 1 Month Notice.

On July 8, 2017, an incident occurred where KG maintained that first the male tenant in the upper level unit (RW) and then the female tenant in that unit (JR) threw water at her. KG filmed a video of the female tenant throwing water from a glass at her from their upstairs rental unit. KG was at the ground level when this water was thrown at her. In the written evidence, KG and her male friend who was present during this incident maintained that the water was hot and caused red marks on KG, which she only noticed after she changed her clothes. KG and/or her male friend called the police, who attended the premises. The landlord provided written evidence and undisputed sworn testimony that the male tenant RW was charged with assault for throwing water at KG. The landlord requested an Order of Possession for the reasons cited in the 1 Month Notice. The landlord also entered into written evidence copies of documents provided by the landlord's lawyer, outlining the information he obtained about this incident from an "investigation" he conducted regarding this matter. This investigation seems to have been limited to a provision of statements and emails from the tenants, KG and her male friend.

Tenant RW confirmed that he has been charged with assault as a result of the July 8, 2017 incident and is scheduled to appear in court on November 1, 2017. He said that the water that he tossed in the direction of the downstairs tenant was a half glass of lukewarm water, which he is not certain even touched the downstairs tenant. He said that his lawyer was 99% certain that the judge who hears this assault charge on November 1, 2017 will throw this charge out.

The tenant said that the water throwing incident, for which he expressed remorse, resulted from what he now recognized as an inappropriate response to continued door slamming by KJ, her brother and KJ's male friend. He said that the downstairs residents and more recently KJ's brother had been slamming their door so hard that pictures on the tenants' wall have fallen. The tenants have repeatedly asked KJ and her male friend to discontinue this practice, without success. On July 8, 2017, the tenant said that the door slamming and the subsequent verbal abuse from the KJ's male friend finally got the better of both he and his wife, and they resorted to throwing half glasses of water at the downstairs tenant. He also maintained that the red marks were a total fabrication on the part of KJ and her male friend. He said that KJ often takes actions to provoke the tenants and then pulls out her cellphone to video their reaction. He said that he and his wife have called the police four times in the past regarding actions taken by KJ and her male friend, although no charges have previously been laid against either sets of residents or guests at this rental property.

### Analysis

While I have turned my mind to all the documentary evidence, including miscellaneous letters and emails from the landlord, the landlord's lawyer, another tenant in the lower level of the rental unit and her mail friend, a five second video submitted on a flash drive by KJ, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenants' claim and my findings around each are set out below.

As the landlord was seeking an end to this tenancy on the basis of the 1 Month Notice, the burden of proof rests with the landlord regarding this matter.

I must first note that a single episode of throwing glasses of water at another tenant does not seem adequate justification to end a tenancy for cause. However, the laying of charges by the police against the male tenant does distinguish this from what could otherwise be considered an inappropriate and somewhat juvenile response to an ongoing dispute.

In a hearing of this type where there are conflicting versions of what transpired regarding a single incident, an arbitrator weighs the evidence before them. In this case, I find the best evidence is that provided by way of sworn testimony by the tenant, the only eyewitness to the incident of July 8, 2017. Without the benefit of eyewitness testimony that could be questioned by the tenant, the landlord has produced only written statements from KJ and her male friend regarding these events, as well as the five second video. Had any eyewitness been produced

by the landlord for this hearing, the tenant would have had the same opportunity to question their sworn testimony and written evidence that was afforded to the landlord. At the hearing, the tenant raised a number of concerns about the written accounts provided by KJ and her male friend, and was unable to question them about their statements.

While the video does confirm that water was thrown from a glass at the downstairs tenant by the upstairs female tenant, there is little context to this action provided in the video alone. In the video, there is no indication that the water was steaming, nor that the photographer, KJ winced from hot water striking her. In the written statement from KJ's male friend, he acknowledged that KJ did not even realize that the water was hot until later when she removed her clothing and noticed red marks on her body, which she and he attributed to the temperature of the water thrown at her.

Given that the downstairs tenant did not even realize the water was hot until later, I find the tenant's sworn testimony of this incident at this hearing far more plausible than that presented by way of the landlord's submission of written statements from KJ and her male friend. The tenant attended the hearing and was not questioned by the landlord with respect to his account of what happened. By contrast, there was no opportunity for the tenant to question KJ or her male friend as to the account of this event that they described in their written statements. In this case, I find that by far the best evidence before me is that provided by way of sworn testimony by the tenant. The tenant admitted freely that he and his wife acted inappropriately by throwing water and expressed regret for their actions in this regard. However, he insisted that it was lukewarm temperature at the most and speculated that the red marks on the downstairs tenant, if they indeed occurred, could have resulted from dye leaking from her red top onto her skin.

Although the landlord was aware that there have been disputes between the tenants in these two rental units, the landlord has failed to provide any written warnings to the tenants prior to the July 8, 2017 incident. While written warnings are not necessary in every case, notices for cause are usually preceded by some type of written warning. Without any prior written warning and without details of specific verbal warnings having been provided by the landlord, I do not find the incident of July 8, 2017 serious enough to warrant the landlord's actions to issue a 1 Month Notice. I also note that there have also been no ongoing incidents since the 1 Month Notice was issued.

I find that the landlord has not presented sufficient evidence to demonstrate that this tenancy should be ended for cause. While there is no doubt a poor relationship between the two sets of tenants in the landlord's rental property, the tenant has provided sufficient direct testimony to raise questions as to whether the tenants in this application are solely responsible for the problems that have arisen.

Under these circumstances and based on a balance of probabilities, I allow the tenants' application to cancel the 1 Month Notice.

My allowance of the tenants' application to cancel the 1 Month Notice in no way condones the actions taken by the tenants regarding the incident of July 8, 2017. I would expect that the charges laid against Tenant RW will act as a key reminder that the tenants are accountable for their actions. The tenants are advised that the landlord's issuance of the 1 Month Notice should serve as a warning that further episodes of this nature, supported by more direct evidence from those witnessing such acts, will not be tolerated and may very well lead to an end to their tenancy for cause.

#### Conclusion

I allow the tenants' application to cancel the 1 Month Notice. The 1 Month Notice is of no effect and this tenancy continues until ended in accordance with 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: October 19, 2017

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Residential Tenancy Branch