



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application for cancellation of the landlord's One Month Notice to End Tenancy for Cause (the One Month Notice) pursuant to section 47 of the *Residential Tenancy Act* ("the Act").

The landlord, the tenant, the tenant's advocate and the tenant's roommate 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 tenant's advocate stated that she would be the primary speaker for the tenant.

While I have turned my mind to all the documentary evidence, including the testimony of the parties and witness testimony, not all details of the respective submissions and/or arguments are reproduced here.

The landlord acknowledged receipt of the Application for Dispute Resolution (the Application) and evidentiary package sent to the landlord by way of registered mail on October 13, 2017. In accordance with sections 88 and 89 of the *Act*, I find the landlord was duly served with the Application and evidentiary package.

The tenant acknowledged receipt of the landlord's evidentiary package that was sent to them by registered mail on November 23, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the landlord's evidence.

The Tenant confirmed that they received the One Month Notice, which was posted to the door of the rental unit on September 26, 2017. In accordance with section 88 of the *Act*, I find the tenant was duly served with the One Month Notice.

### Issue(s) to be Decided

Should the landlord's One Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

### Background and Evidence

The landlord provided written evidence that this tenancy began on October 01, 2005, with a current monthly rent of \$620.18, due on the first day of each month. The landlord confirmed that they currently retain a security deposit in the amount of \$240.00.

A copy of the signed landlord's One Month Notice dated September 26, 2017, was entered into evidence by the tenant and the landlord. In the One Month Notice, requiring the tenant to end this tenancy by October 31, 2017, the landlord cited the following reasons for the issuance of the One Month 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.*
- *put the landlord's property at significant risk.*

*Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has or is likely to damage the landlord's property.*

The landlord also provided into written evidence:

- a copy of a previous decision and Order of Possession from the Residential Tenancy Branch (RTB);
- two copies of invoices dated September 12, 2016 and September 27, 2016, for the expenses related to a previous eviction of the tenant;
- various letters and e-mails from other occupants regarding the conduct of the tenant from 2015 and 2016;
- a warning letter from the landlord to the tenant dated May 30, 2017, regarding other occupants hearing the tenant yelling and using excessive language at 2:00 PM. The warning letter indicates that quiet time in the building is from 11PM to 9AM;
- a warning letter from the landlord to the tenant dated July 18, 2017, regarding other occupants complaining of excessive noise and items being thrown off of the

patio deck from 9:30 p.m. to after midnight. The warning letter indicates that quiet time in the building is from 11PM to 9AM;

- a copy of an inspection report for the rental unit dated July 24, 2017, signed by an agent of the landlord and the tenant and listing issues with the unit such as its general cleanliness, fresh dog feces and urine on the floor, mould, smoke grease on walls and a hole in a window screen; and
- a copy of a complaint letter from an occupant in the residential premises received by the landlord on October 21, 2017, regarding a guest of the tenant jamming the electrical box at the entrance door to keep it open.

The landlord testified that they had received an Order of Possession from a previous hearing with the RTB regarding the tenant and had the bailiff at the rental unit but, upon intervention by an advocacy group on behalf of the tenant, did not go through with the eviction. The landlord stated that they gave the tenant another opportunity to continue their tenancy with a promise from the tenant to reimburse the landlord for the expenses related to the eviction.

The landlord submitted that the tenant is in breach of term #13 of the residential tenancy agreement signed between the two parties regarding an additional occupant living in the rental unit. The landlord stated that the tenant is also in breach of term #17 of the agreement regarding the conduct of the tenant's guests, term #18 regarding unauthorized pets in the rental unit and term #26 regarding the tenant's obligation to maintain reasonable health cleanliness and sanitary standards throughout the rental unit. The landlord testified that upon inspection of the rental unit it was discovered that the tenant was not cleaning up after their pets. The landlord also submitted that the tenant has been continuing to act inappropriately towards other occupants.

The landlord further testified that someone witnessed the tenant's guests causing damage to the entrance door to the building on October 21, 2017. The landlord submitted on October 26, 2017, the landlord also witnessed the tenant's guests causing damage to the entrance door to the building by jamming it open.

The advocate stated that the tenant was not given any timeframe for a chance to improve and clean the rental to an acceptable standard to the landlord. The advocate submitted that the damage to the entrance door of the building occurred after the One Month Notice was served to the tenant and should not be considered. The advocate stated that the tenant is handicapped with limited mobility and the object that was thrown off of the balcony was set of keys to let a friend into the building. Regarding the excessive noise, the advocate stated that the tenant listens to the television with the

volume very high due to hearing issues but that the tenant will be mindful in the future and turn the volume down. The tenant testified that his apartment is very clean and that he does not agree with the inspection report.

The landlord responded to the advocate's submissions and stated that the landlord did do a second inspection on July 31, 2017, and that the condition of the rental unit had not improved. The landlord admitted that they did not complete another inspection report and submit it into evidence to support their claim. The landlord affirmed that the main reasons for the eviction are the additional occupant, the cleanliness of the rental unit and the pets in the unit.

### Analysis

Section 47 of the *Act* allows a landlord to issue a Notice to End Tenancy for Cause to a tenant if the landlord has grounds to do so. Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch.

If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the One Month Notice. As the tenant disputed this notice on October 06, 2017, and since I have found that the One Month Notice was served to the tenant on September 26, 2017, I find the tenant has applied to dispute the One Month Notice within the time frame provided by section 47 of the *Act*.

I find that I cannot consider any evidence for events that occurred prior to the Order of Possession that was previously issued by the RTB as the principle of res judicata does not allow for matters that have already been heard and decided on to be considered again. I find that the landlord obtained an Order of Possession and chose to waive their right to enforce it and that the tenant cannot be evicted again based on the same matters.

I further find that I cannot consider any evidence for events that occurred after the One Month Notice was issued to the tenant as those events were not the reason for the One Month Notice being issued to the tenant.

I find the landlord bears the burden of proof to demonstrate 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, has seriously jeopardized the health or

safety or lawful right of another occupant or the landlord, put the landlord's property at significant risk and has engaged in illegal activity that has or is likely to damage the landlord's property.

I have reviewed all documentary evidence and affirmed testimony and I find that, based on a balance of probabilities and the above, the landlord has failed to prove that they have sufficient cause to issue the One Month Notice to the tenant.

I find that there are only two documented warning letters regarding incidents of the tenant being loud and using excessive language, one of which occurred during the daytime hours. I find that there are no witness statements supporting the landlord's warnings which demonstrate how other occupants or the landlord were unreasonably disturbed or the duration of the disturbance. I find that there is no evidence submitted to prove that the tenant has been continuing to act inappropriately to other occupants. I find that the landlord has not proven that the incidents of excessive noise in the past year of the tenancy, one of which occurred after the established quiet time of the building, are significant interfering or unreasonably disturbing other occupants or the landlord as opposed to temporary, isolated inconveniences to other occupants or the landlord.

I find that, while the cleanliness of the rental may not be ideal, there is no evidence that it is affecting the health or safety or lawful right of another occupant or the landlord. I find that, even though the landlord found fresh dog feces and urine on the tenant's floor, they did not note that they found old dog feces or urine stains in the unit which indicates that the tenant is cleaning up after their pet and that an accident may have occurred which the tenant did not have time to clean up prior to the inspection. I accept the advocate's submission that the landlord did not give the tenant a timeframe to clean the apartment and I find that there is no second condition inspection report that verifies that the tenant did not clean their rental unit after the first inspection was completed and expectations were communicated to the tenant.

I find that the landlord has not provided sufficient evidence that the tenant put the landlord's property at significant risk or engaged in illegal activity that is likely to damage the property as the incidents of damage to the front door occurred after the One Month Notice was issued and were not the reasons for the issuance of the One Month Notice to the tenant. I find that the incidents of excessive noise and the condition of the rental unit are not a significant risk to the property or considered illegal activity.

The landlord has indicated that the additional occupant and the unauthorized pets are the other reasons for the One Month Notice being issued to the tenant in addition to the cleanliness of the rental unit, however; there is no evidence before me that that the additional occupant or the pets are significantly interfering with or unreasonably disturbing another occupant or the landlord, seriously jeopardizing the health or safety or lawful right of another occupant or the landlord, putting the landlord's property at significant risk and are engaged in illegal activity that has or is likely to damage the landlord's property.

While it is not before me, I caution that the tenant may have breached terms of the tenancy agreement, however; I find that the tenant has not been given any written notices to correct any material breaches regarding their pets or the additional occupants and given a reasonable time to correct the issues.

For the above reasons, the One Month Notice is set aside and this tenancy continues until it is ended in accordance with the *Act*.

### Conclusion

The tenant is successful in their Application.

The One Month Notice dated September 26, 2017, is set aside and this tenancy will continue until it is 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: January 09, 2018

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Residential Tenancy Branch