



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      Tenant: OLC MNDC CNC LAT PSF FF  
Landlord: OPC FF

### Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on January 17, 2018.

The Landlords and the Tenant both attended the hearing. The Tenant was accompanied by his advocate. All parties provided affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. Both parties confirmed receipt of each other's documentary evidence.

I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

### Preliminary and Procedural Matters

The Tenant applied for multiple remedies under the *Residential Tenancy Act* (the "Act"), a number of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues in both applications deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to

reapply, all of the grounds on the Tenant's application with the exception of the following ground:

- to cancel a 1-Month Notice for Cause (the "Notice").

Further, since the issues that the Landlord has cross-applied for all relate to the Notice and the end of the tenancy, they will be considered in this hearing.

#### Issues(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
  - If not, are the Landlords entitled to an Order of Possession?

#### Background and Evidence

The landlords issued the Notice for the following reasons:

*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:*

- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant.*

The Tenant acknowledged receiving the Notice on October 30, 2017. Under the "Details of Cause" section on the Notice, the Landlord only stated "aggressive behavior toward the Landlord".

During the hearing, the Landlords stated that the Tenant has been aggressive towards them, and they do not feel safe living below him (he lives in the upper unit). More

specifically, the Landlord stated that there were a series of events and text messages on October 26-28, 2017, which led to a dispute on October 28, 2017.

The Landlord testified that they had some discussions with the Tenant around upgrades that were going to be completed to the house overall and to the rental unit, such as soundproofing, some electrical, laundry and heat upgrades.

The Landlord stated that they have a history of text messaging each other, but the more problematic string of messages (also provided into evidence) began on Thursday, October 26, 2017. In the messages, the Landlord stated that several issues were being discussed, and finally, on Saturday, October 28, 2017, the Landlord expressed to the Tenant via text message that she did not want to communicate about anything further until Monday (normal business hours), unless it was an emergency. The Landlord stated that she had a Halloween party on Saturday night, so she had to get prepared for that and didn't want to discuss anything further with the Tenant until the following week.

The Landlord stated that she tried to end the text message conversation she was having with the Tenant, but instead of texting, he came in person down to her outdoor patio and continued trying to discuss with her in a heated and angry manner. The Landlord stated that the Tenant came down to keep talking about some of the renovations, upgrades, and issues but that it seemed to be done in a confrontational manner.

The Landlord stated that they had to ask him to leave their patio because he was being loud and aggressive. After going back upstairs, the Landlord stated that they could hear him banging around and yelling in his unit. The Landlord stated that they sent him another text asking him to stop. The Landlord stated that the Tenant periodically continues to stomp around and yell since getting the Notice.

The Tenant stated that this whole disagreement started off as a "heating issue". He stated that he was asked by the Landlord to set his heat to 22 or 23 degrees in order to allow the Landlords to be sufficiently hot in their unit down below. The Tenant stated that the thermostat for the entire house is in his upper unit. He also stated that he found it way too hot for them upstairs. The Tenant is responsible for about 2/3 of the hydro bills, so he feels he shouldn't have to keep it so hot just to keep the Landlords comfortable downstairs, especially when he goes away for trips.

The Tenant stated that he used to be friends with the Landlords and he was even invited to their party on October 28, 2017, before the disagreement unfolded. The Tenant stated that he was frustrated that the Landlords would stop communication in the way they did because the issues were not resolved, so he went down in person to try to continue the conversation. The Tenant stated that he thought it would be okay for him to go down because he had been invited to attend their party. He thought his relationship with the Landlords was such that he could go down to talk in person, despite the text message saying to wait till the following week.

The Tenant stated that there is also an issue with the laundry, which has further added to the dispute, because the Tenant has to enter the Landlord's unit in order to do his laundry. This has created disagreements about timing of laundry and security of the Landlords' unit while laundry is being done.

The Tenant stated that the police have since been called about some of these issues but they have stated they want to stay out of it.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reasons in the Notice are valid. I note that the relationship between the parties has not improved since the Notice was issued. However, my focus in this hearing is whether the Landlord had sufficient cause to end the tenancy, at the time the Notice was issued.

I turn to the Notice issued by the landlord and I find it meets the form and content requirements under section 52 of the *Act*. I note the Tenant received the Notice on October 30, 2017, and applied to dispute it the following day.

After reviewing the Notice, I note that it lists multiple grounds for ending the tenancy, as above. However, it appears that much of the Landlord's testimony and evidence presented at the hearing relates to the Tenant's alleged aggressive behaviour. Further, under the details of cause section of the Notice, it only identifies "aggressive behavior toward the Landlord". As such, I find this is the issue I will focus on, and whether or not it has been sufficiently demonstrated that this aggression gives the Landlord sufficient cause to end the tenancy under any of the grounds selected on the Notice.

I turn to the incident on October 28, 2017, as it appears to be central, and somewhat seminal, to the bulk of the Landlord's claims against the Tenant. I note that the relationship between the Tenant and the Landlord has degraded. However, prior to this degradation, it appears that at one point the Tenant and Landlords were friendly enough as to warrant the Tenant being invited to the Landlords' party. Further, some of the text messages indicate social interaction, beyond a mere landlord/tenant relationship. The Tenant stated that this was, in part, why he felt comfortable going down to the Landlord's area to continue discussing the issues, despite getting a text saying the Landlord wanted to wait until the following week.

I have considered the totality of the situation leading up to the issuance of the Notice, and I have considered what occurred from October 26-28, 2017 (degrading communications, strings of text messages, and arguments). It appears the Tenant ignored the Landlord's request, on Saturday, October 28, 2017, to stop communicating with them until regular business hours the following week when he went down to their area in person. I note that when he went down to carry on the discussion in person, an argument ensued. However, I have considered that there appears to have been a friendship of sorts leading up to the incident (including an invite to their party), and it does not seem unreasonable for the Tenant to attend in person to resolve matters, given the nature of their relationship. I acknowledge that matters were *not* resolved, and in fact they escalated, but I do not find the situation was egregious or significant enough as to warrant the Landlord issuing the Notice under any of the following grounds:

*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.*

Further, I do not find there is sufficient evidence that the Tenant has engaged in an illegal activity that warrants the end of this tenancy under the following grounds:

*Tenant or a person permitted on the property by the 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.*

I find that the landlord has not provided sufficient evidence to support the reason to end the tenancy; therefore, the Tenant's application is successful and the Notice received by the Tenant on October 30, 2017, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

As the Tenant was successful with his application, I grant him the recovery of the filing fee against the Landlord. The Tenant may deduct the amount of \$100.00 from 1 (one) future rent payment.

### Conclusion

The Tenant's application is successful. The Notice is cancelled.

The Tenant may deduct the amount of \$100.00 from one (1) future rent payment.

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 17, 2018

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Residential Tenancy Branch