



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Regent Park Supreme Realty  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* (“the Act”) for an order as follows:

- to cancel a 1 Month Notice to End Tenancy given for Cause (“1 Month Notice”) pursuant to section 47 *Act*; and
- more time to dispute a notice to end tenancy.

Both the tenant and the landlord attended the hearing. The tenant was represented at the hearing by her advocate, R.C., while the corporate landlord was represented at their agent, D.C. (the “landlord”). All parties present were given a full opportunity to be heard, to present their sworn testimony and to make submissions under oath.

### Preliminary Issue – More Time to Dispute Notice

The tenant has applied for more time to make her application. The tenant acknowledged receiving the landlord’s 1 Month Notice on October 20, 2017 but did not apply to dispute the notice until November 24, 2017, well past the 10 days allowable time limit under section 47(4) of the *Act* to submit an application for dispute resolution.

Section 66 of the *Act* allows an arbitrator to extend a time limit established by the *Act* only in exceptional circumstances. As part of her evidentiary package, the tenant provided a letter from her community minister and advocate, R.C., along with note from a doctor who examined the tenant. In the letter provided to the hearing by R.C., it is noted that the tenant’s attempts to dispute the notice, “have been hampered by her disability and her poor health.” The letter continues to explain that the tenant does not have any computer skills and requires assistance with the filing of an Application for Dispute Resolution. The letter from the tenant’s doctor described similar disabilities. I

find that the tenant's disabilities, coupled with her lack of computer literacy to be *exceptional circumstances* which prevented her from adequately responding to the notice to end tenancy in a timely fashion. At the hearing the landlord did not raise any arguments against an extension being granted to the tenant. For these reasons, I allow the tenant's application for more time to make an application to cancel a notice to end tenancy.

### Issue(s) to be Decided

Can the tenant cancel the landlord's 1 Month Notice? If not, should the landlord be granted an Order of Possession?

### Background and Evidence

Undisputed testimony provided to the hearing by the tenant explained that this tenancy began in May 2009. Rent was \$650.00 at the outset of the tenancy, and a security deposit of \$325.00 continues to be held by the landlord.

The tenant has applied to cancel a 1 month notice to end tenancy for cause ("1 Month Notice") which was served on her in October 2017. The notice indicated that the tenant has; significantly interfered with or unreasonably disturbed another occupant or the landlord; engaged in illegal activity that has adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant, and; jeopardized a lawful right or interest of another occupant or the landlord.

At the hearing, the landlord argued that the tenant had engaged in illegal activity and had significantly interfered with, and unreasonably disturbed the other occupants by engaging in loud, verbal altercations with people who came to visit her at the rental unit. When asked to identify which illegal activity the tenant had engaged in, the landlord said, "foul language and being rude." The landlord also argued that the tenant did not properly use the garbage bins provided to the tenants, and often left her debris in the alleyway. He said that this led to many rodents and other animals being attracted to the area for the garbage placed next to the bins.

As part of his evidentiary package, the landlord provided two letters which he said should be considered warning letters. The first letter written by occupant M.M. to the property manager, I.L., contains complaints of noise and disturbing behaviour which the tenant has allegedly engaged in. The second addressed to the Ministry of Social

Development advises the Ministry of foul language coming from the apartment and then cites the reasons given in the landlord's 1 Month Notice.

The tenant and her advocate disputed all aspects of the landlord's application and argued the landlord's 1 Month Notice should be dismissed. They said that no warning letters were ever received by the tenant and noted that the landlord had failed to address the letters to the tenant, sending them instead to the Ministry of Social Development and the Property Manager. In addition, the tenant and her advocate pointed out that the landlord had failed to provide any dates on which any of the alleged disturbances had occurred, had failed to provide any letters of complaint and could not adequately explain how many garbage bins were available for the tenants use.

### Analysis

The landlords have applied for an Order of Possession based on a Notice to End Tenancy for Cause. On their Notice to End Tenancy, the landlords cited three reasons for its issuance.

The landlords allege that the tenant or a person permitted on the property by tenant has;

- significantly interfered with or unreasonably disturbed another occupant or the landlord;

And –

The tenant has;

- engaged in illegal activity that has, or is likely to jeopardized a lawful right or interest of another occupant or the landlord;
- 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.

I will begin by analyzing the second part of this notice.

*Residential Policy Guideline #32* states, "The term *illegal activity* would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property."

*Guideline #32* continues by stating;

The party alleging the illegal activity has the burden of proving that the activity was illegal...the illegal activity must have some effect on the tenancy...if a person permitted in the rental unit or on the residential property engages in an illegal activity, this may be grounds for terminating the tenancy even if the tenant was not involved in the illegal activity. The arbitrator will have to determine whether or not the tenant knew or ought to have known that this person may engage in such illegal activity.

The test of knowledge attributable to the tenant is the “reasonable person” test. If a reasonable person would be expected to know or ought to know that illegal activity might occur, the tenant will be responsible whether or not the tenant actually possessed this knowledge.

Based on the facts presented at the hearing and in evidence, I do not find that the events described by the landlord fall within the definition of illegal activity. The landlord said that the tenant used foul language and caused disturbances to others when she was loud and swearing with her visitors. These activities are not illegal and do not fall within the description provided by the *Guidelines*. For these reasons, I dismiss this portion of the landlord’s 1 Month Notice.

The landlord has also alleged that the tenant or a person permitted on the property by tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord. As part of his evidentiary package, the landlord submitted two letters which he said were warning letters which describe the manner in which the other occupants have been disturbed by the tenant. I find that these letters contain little detail regarding any alleged disturbances, they fail to provide any specifics as to the time, date or frequency of the alleged disturbances and they were not ever provided to the tenant. At the hearing, the landlord acknowledged that he had not seen the property and could not accurately how many garbage cans were available for the tenants use. Furthermore, the landlord explained that the police had been called to the rental unit on numerous occasions to attend to disturbances allegedly caused by the tenant; however, the landlord could not provide any details on the nature of these disturbances nor could he provide the dates when the police attended the property. I find that the landlord has failed to demonstrate how the tenant has significantly interfered with or unreasonably disturbed the other occupants. This portion of the landlord’s notice is dismissed.

Conclusion

The tenant was successful in her application to cancel the landlord's 1 Month Notice. This tenancy shall 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: February 14, 2018

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Residential Tenancy Branch