



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

This hearing dealt with an application by the tenants under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) under section 47 of the *Act*; and
- Recovery of the filing fees to this application from the landlord pursuant to section 72 of the *Act*.

Both parties attended the hearing and were given full opportunity to provide affirmed testimony, present evidence, cross examine the other party and make submissions.

The landlord acknowledged receipt of the tenants’ Notice of Hearing and Application for Dispute Resolution. The tenants acknowledged receipt of the landlord’s materials. No issues of service were raised. I find the landlord was served in accordance with section 89 of the *Act*.

Both parties were informed of Section 55 of the *Act* which requires, when a tenant submits an Application for Dispute Resolution seeking to cancel a One Month Notice to End Tenancy for Cause issued by a landlord, I must consider if the landlord is entitled to an order of possession if the Application is dismissed and the landlord has issued a notice to end tenancy in compliance with the *Act*.

### *Preliminary Issue*

The landlord testified each tenant rented a bedroom in the unit. Each tenant had a separate residential tenancy agreement with the landlord with unique terms.

However, the landlord issued a single One Month Notice naming both tenants. The One Month Notice was dated July 3, 2018 and posted on the door of the unit on July 3, 2018. The tenants together applied to set aside the One Month Notice on July 10, 2018, in accordance with the *Act*.

Each landlord-tenant relationship is generally a separate matter for which a distinct One Month Notice must be issued and a separate application for dispute resolution must be made based upon the terms of their individual relationship.

Pursuant to Residential Tenancy Act Policy Guideline # 13, the tenants are not co-tenants. The Guideline states in part as follows:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement. Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy.

The Guideline also defines tenants in common:

"Tenants in common" sharing the same premises or portion of premises may enter into separate tenancy agreements with a landlord. A tenant in common has the same rights and obligations as an ordinary tenant with a separate tenancy and is not responsible for debts or damages relating to the other tenancy.

In this case, the landlord has brought one application against both tenants who are not co-tenants but are instead tenants in common.

While more than one tenant may be named in an application, this generally occurs when two or more tenants have entered into a lease or rental agreement together.

In this case, the only connection between the two tenants is that they reside in the same basement apartment. As stated, the terms of their respective tenancy agreements are not the same and each holds a separate tenancy agreement. They are not joint or co-tenants of one rental unit.

The landlord has *not* brought separate proceedings against each tenant and sought to join them or add a party. Instead, she seeks to bring separate tenancy agreements under the procedural umbrella of one proceeding.

The primary cause for the landlord's issuance of the One Month Notice is marijuana smoking in or near the unit. The tenant FH acknowledged smoking marijuana outside the rental unit in an adjacent alley. The tenant JM testified she did not smoke marijuana and stated only the tenant FH smoked marijuana.

The landlord has not shown a connection between the tenants as a basis for a claim of shared responsibility.

An arbitrator has authority, pursuant to section 62 of the *Act*, to dismiss all or part of an application for dispute resolution.

In consideration of the testimony of the parties, the requirement for procedural fairness and the provisions of the *Act* and *Rules of Procedure*, I decline to hear this application against both tenants together. Each tenant is entitled to procedural fairness and a separate hearing.

The landlord withdrew the One Month Notice against the tenant JM.

Accordingly, I allowed the hearing to proceed with respect to the tenant FH only.

The tenant FH is hereafter referred to as "the tenant".

Issue(s) to be Decided

- Is the tenant entitled to a cancellation of the One Month Notice under section 47 of the *Act*;
- If the tenant is not successful in cancelling the One Month is the landlord entitled to an Order of Possession under section 55 of the *Act*; and
- Is the tenant entitled to recovery of the filing fees to this application from the landlord pursuant to section 72.

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here. The principal aspect of the claims and my findings are set out below.

The parties agreed they entered into a tenancy agreement on April 1, 2018 for rent of \$622.00 a month, payable on the first of the month. The tenant provided a security deposit of \$311.00 which is held by the landlord. A copy of the agreement was submitted as evidence.

On July 3, 2018, the landlord posted the One Month Notice to the door of the unit. The tenant acknowledged receipt. The notice provided an effective date of August 6, 2018 (corrected to August 30, 2018) for vacancy for the following causes:

- The 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 knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property park.

A copy of the One Month Notice was submitted as evidence.

The landlord testified the unit is in a single residential building in which the tenant resides in the basement unit. The landlord's mother-in-law lives in the upstairs unit. The occupant of the upstairs unit has various health issues and requires clean air free of smoke.

The landlord stated that, shortly after the tenant moved in to the unit, the landlord and the upstairs occupant smelled marijuana and cigarette smoke ("the smoke"). The landlord submitted many texts to the tenant as evidence in which she complains about the smoke and demands the tenant stop smoking in or near the unit.

The tenant denied smoking in the unit. He stated that when he received the complaints, he started smoking at least 9 meters away from the property line of the building. When the complaints continued, the tenant testified he then only smoked in the alley adjacent to the unit. The tenant vehemently denied that the upstairs occupant could smell smoke caused by him. The tenant attributed any smoke smell from pervasive forest fire smoke or from other smoking passers-by.

JM, who shares the unit with the tenant, testified that the tenant does not smoke in or near the unit. She testified he only smokes well away from the unit beyond the property line of the building.

The landlord has never seen the tenant smoke in or near the unit.

### Analysis

Section 47 of the *Act* provides that, upon receipt of a One Month Notice, 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, on a balance of probabilities, the grounds for the One Month Notice.

Pursuant to sections 88 and 90 of the *Act*, and based on the submissions of both parties, the tenant is deemed served with the One Month Notice on July 6, 2018, three days after posting. The tenant brought this application within the ten-day period, in accordance with the *Act*.

To be effective, the One Month Notice must comply with the provisions of section 52 of the *Act*. I find the One Month Notice complies with section 52.

The landlord must now show on a balance of probabilities, which is to say, it is more likely than not, the tenancy should be ended for the reasons identified in the One Month Notice. In the matter at hand, the landlord must demonstrate that 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.

- Knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property park.

Although the One Month Notice alleges three grounds, the landlord relied on the first two grounds. The landlord claims the tenant's smoking significantly interfered with or unreasonably disturbed another occupant (the upstairs occupant) and it seriously jeopardized the health of another occupant (the upstairs occupant).

The landlord provided testimony that the smoke smell was obvious to her every time she visited the building after the tenant moved in. She said the smoke smell was pervasive and strong. The landlord explained the odour was so powerful, she was convinced the tenant was smoking in the unit. The landlord testified her mother-in-law, who occupied the upstairs premises, was constantly disturbed by the smell and that it adversely affected her health. The landlord testified neighbours complained to her about the smell from the tenant's smoking.

The parties agreed the landlord warned the tenant many times about the smoke. However, the tenant claimed he took all reasonable steps to assure that his smoking did not bother the upstairs occupant or the landlord. As mentioned earlier, the tenant denied he smoked in the unit; this claim was supported by the testimony of JM.

I accept the landlord's evidence that the upstairs occupant is bothered by smoke. However, I am unable to find that the tenant's smoking is the source. The tenant's testimony, supported by JM, is that the tenant never smokes in the unit, and only smokes outside, on or near the alley, well away from the building.

Considering the evidence and the testimony, I find on a balance of probabilities that the landlord has not established that the tenant significantly interfered with or unreasonably disturbed another occupant or seriously jeopardized the health of another occupant. I find the landlord has not met the burden of proof required. Therefore, there no need for me to consider whether the landlord is entitled to an Order of Possession pursuant to section 55.

I therefore grant the tenant an order setting aside the One Month Notice.

The tenant is entitled to reimbursement of the filing fee in the amount of \$100.00 pursuant to section 72. I authorize the tenant to make a one-time deduction from rent in the amount of \$100.00.

Conclusion

The tenant is granted an Order setting aside the One Month Notice.

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: September 25, 2018

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Residential Tenancy Branch