



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NAV HOLDING CO  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC OLC RP FFT

### Introduction

This hearing dealt with the tenant's 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;
- an order that the landlord comply with the Act, regulations or tenancy agreement pursuant to section 62;
- an order that the landlord make repairs to the rental unit pursuant to section 33; and
- authorization to recover the filing fee from the landlord pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporate landlord was primarily represented by its agent DW (the "landlord").

As both parties were present service of documents was confirmed. The landlord confirmed receipt of the tenant's application of October 16, 2018 and evidence. The tenant confirmed receipt of the landlord's 1 Month Notice dated October 11, 2018 and evidence. Based on the undisputed evidence of the parties I find that each party was duly served with the respective materials in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the 1 Month Notice be cancelled? If not is the landlord entitled to an Order of Possession?

Should the landlord be ordered to comply with the Act, regulations or tenancy agreement?

Should the landlord be ordered to make repairs to the rental unit?

Is the tenant entitled to recover the filing fee for this application?

### Background and Evidence

The parties agreed on the following facts. This periodic tenancy began in August, 2012. The current monthly rent is \$1,186.00 payable on the first of each month. The rental unit is a suite in a multi-unit building containing 42 rental units.

On the 1 Month Notice dated October 11, 2018 the landlord listed the following reasons for the tenancy to end:

*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 has engaged in illegal activity that has, or is likely to:*

- *damage the landlord's property;*
- *adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord;*

The landlord testified that the illegal activity that the tenant and the tenant's spouse have engaged in is that they have repeatedly touched other people's clothing in the shared laundry room. The landlord said that there have been complaints from other residents. The landlord's agent resides in the rental building and said that he has experienced the tenant touching their clothes on a number of occasions. The landlord further submits that they are missing some articles like towels and believe that the tenant is stealing items from the laundry room.

The landlord testified that on one occasion the tenant's child took a shower and caused water to leak into the suite below. The landlord submitted into evidence an invoice for the repairs necessitated. The landlord said that the tenant failed to use the shower curtain properly causing the water damage.

The landlord testified that the tenant and his family have acted in a disrespectful, aggressive and threatening manner towards the landlord and the other employees of the corporate landlord. The landlord mentioned occasions where the tenant has been verbally abusive and rude.

The tenant disputes the landlord's evidence. The tenant said that they have removed clothes from the machines in the laundry room when the cycle is complete so they can access and use the machines themselves. The tenant said that there are only 2 washing machines for the building and clothes are removed from the machine when the wash cycle is done. The tenant disputes that they have stolen any items.

The tenant said that the water damage was a one-time occurrence. The tenant disputes that they are the aggressors in interactions with the landlord and testified that the landlord is the one who acts in a threatening and abusive manner. The tenant gave testimony about various complaints they have with the rental suite and the building in general. The tenant testified that they have been long-term residents and have not had issues with previous property managers.

### Analysis

Section 46 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, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice. In the matter at hand the landlord must demonstrate that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant, adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant, have put the landlord's property at significant risk or that they have engaged in illegal activity that has damaged the landlord's property and adversely affected the quiet enjoyment, security, safety or physical well-being of another occupant or the landlord.

The landlord submits that the illegal act of the tenants is their theft of items from the communal laundry room. I find that there is insufficient evidence in support of the landlord's claim. I find that the landlord's testimony of missing an article and claiming

that other tenants have made complaints to be insufficient to demonstrate that there have been illegal activities. The landlord's documentary evidence consists of hand written diary notes which claim that several tenants made a complaint. The notes do not specify the number of tenants, their names or suite numbers. Furthermore, the notes simply mention complaints about wet clothes being removed from the machines and does not state that there has been any theft. Removing clothing from an active washing machine is not inherently illegal. In any event, I find the evidence provided by the landlord to be insufficient to conclude that there has been an illegal act.

I find that there is insufficient evidence in support of the landlord's allegations. While there is some testimony about aggressive interactions between the parties I find there is little information to show that the tenant is the aggressor and has acted in so egregious a manner that the tenancy should end. I accept the evidence of the landlord and the office manager that the tenant has contacted them making various complaints and requesting unreasonable renovations. While this behaviour may be a nuisance I do not find that it is enough to constitute a significant interference or unreasonable disturbance. Similarly, I find that one incident of a water leak through the floors while bathing to be insufficient to conclude that the tenant poses a significant risk or serious jeopardy to the property or others.

Cumulatively and individually I find that the evidence does not demonstrate on a balance of probabilities that the tenant's conduct has reached a level where it would give rise to a reason to end this tenancy. Accordingly, I dismiss the 1 Month Notice of October 11, 2018. This tenancy will continue until ended in accordance with the *Act*.

I find that the tenant has submitted insufficient evidence in support of their claim for an order that the landlord comply with the *Act*, regulations or tenancy agreement and that repairs are required to the rental suite.

The tenant failed to articulate what specific portions of the *Act*, regulations or the tenancy agreement they believe the landlord is violating or what repairs are required. The tenant's testimony consisted primarily of subjective complaints and theories about the landlord's motivations. I find that there is little documentary evidence in support of the tenant's submissions. The tenant submitted some unsigned, hand scrawled pages which they submit are from other occupants of the building. I find that the tenant has failed to show on a balance of probabilities that there has been any violation by the landlord or that any repairs are required. Consequently, I dismiss this portion of the tenant's application.

As the tenant's application was partially successful I allow them to recover \$50.00 of their filing fee for this application. As this tenancy is continuing the tenant may satisfy this monetary award by deducting \$50.00 from the next scheduled monthly rent payment.

### Conclusion

The 1 Month Notice is cancelled and of no further force or effect. This tenancy continues until ended in accordance with the Act.

The tenant is authorized to make a one-time deduction of \$50.00 from their next monthly rent payment.

The balance of the application is dismissed without leave to reapply.

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: November 23, 2018

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Residential Tenancy Branch