



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE

### Introduction

This teleconference hearing was scheduled in response to an application by the Tenant under the *Residential Tenancy Act* (the “Act”) to cancel a One Month Notice to End Tenancy for Cause (the “One Month Notice”), and to suspend or restrict the Landlord’s right to enter the rental unit.

An agent for the Landlord (the “Landlord”) was present for the teleconference hearing, as was the Tenant and an agent for the Tenant. The Landlord confirmed receipt of the Notice of Dispute Resolution Proceeding package and a copy of the Tenant’s evidence. The Tenant confirmed receipt of a copy of the Landlord’s evidence package. Neither party brought up any issues regarding service.

The parties were affirmed to be truthful in their testimony and were provided with the opportunity to present evidence, make submissions and question the other party.

I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

### Issues to be Decided

Should the One Month Notice to End Tenancy for Cause be cancelled?

If the One Month Notice to End Tenancy for Cause is upheld, is the Landlord entitled to an Order of Possession?

Should the Landlord’s right to enter the rental unit be suspended or restricted?

### Background and Evidence

The parties were in agreement as to the details of the tenancy. The tenancy began around April 2016. Monthly rent is \$700.00 and a security deposit of \$350.00 was paid at the outset of the tenancy.

The Landlord provided testimony that the One Month Notice was served to the Tenant on February 1, 2019 by putting the notice in the Tenant's mailbox. The Tenant confirmed receipt of the One Month Notice on or around February 1, 2019.

The One Month Notice was submitted into evidence and states the following as the reasons for ending the tenancy:

- Tenant or a person permitted on the property by the tenant has:
  - Significantly interfered with or unreasonably disturbed another occupant or the landlord
- 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 Landlord testified that the Tenant has two dogs who bark regularly in the rental unit. The Landlord stated that it seems that anything will set the dogs off and then they will bark for a period of ten minutes up to one hour. He also stated that he has been bit twice by one of the dogs and that the dog has also tried to bite his own dog.

The Landlord submitted a noise complaint letter from the resident who lives above the Tenant. The letter was undated but notes nine times that the Tenant's dogs were barking between January 2, 2019 and January 18, 2019. The letter notes the times that the dogs were heard barking which ranges from a few hours to all day.

The Tenant testified that there are six dogs between the four units on the residential property. She stated that one of her dogs charged at the Landlord's foot one time, but she was not sure if the dog bit the Landlord.

The Tenant stated that after receiving the One Month Notice she purchased an audio recorder to record the dogs while she was out. She stated that when listening to the recordings, the dogs did not bark non-stop, but did bark when she arrived home.

The Tenant also testified that she placed a call regarding possible animal cruelty from her upstairs neighbour on January 2, 2019, the start date of when the neighbour noted barking was heard from her rental unit. The Tenant noted that there is poor noise control between the units and that she can hear the dogs upstairs as well.

The Tenant also stated that she is not gone from her rental unit for more than a couple hours at a time, so the complaints regarding constant or all-day barking are inaccurate.

As for the Tenant's claim to suspend or restrict the Landlord's right to enter, the Tenant stated that after receiving the One Month Notice, the Landlord asked to show her rental unit to prospective new tenants. Although 24 hours notice was provided, the Tenant stated that the Landlord did not show up. The Tenant stated that there have not been any showings arranged since then and the Landlord has not provided any notice to enter.

The Landlord testified that after receiving the Tenant's documents regarding her dispute resolution application, they decided not to show the rental unit to new tenants.

### Analysis

Section 47(4) of the *Act* states that a tenant has 10 days in which to dispute a One Month Notice. As the Tenant confirmed receipt of the notice on or around February 1, 2019 and applied to dispute the notice on February 5, 2019, I find that she applied within the timeframe provided by the *Act*. Therefore, the matter before me is whether the One Month Notice is valid.

As stated by rule 6.6 of the *Rules of Procedure*, when a tenant applies to cancel a notice to end tenancy, the onus is on the landlord to prove, on a balance of probabilities, that the reasons for the notice are valid.

The One Month Notice dated February 1, 2019 was provided under Section 47(1)(d)(i) regarding unreasonably disturbing others and Section 47(1)(e)(ii) regarding illegal activity that may adversely affect the quiet enjoyment of other occupants.

As neither party provided any testimony or evidence regarding illegal activity, I find that this was not a valid ground for ending the tenancy.

As for the Tenant significantly interfering or unreasonably disturbing others due to noise caused by her dogs, I am not satisfied that the Landlord met the burden of proof to establish that this is occurring.

The parties were not in agreement as to whether The Tenant's dogs were barking regularly while the Tenant was away from the rental unit. When two parties to a dispute resolution proceeding provide equally plausible accounts of what occurred, it is up to the party with the onus to provide sufficient evidence over and above their testimony to establish their claim.

The Landlord provided one letter from another occupant in the residential property. However, I accept the testimony of the Tenant that this is a pet-friendly building and that dog barking and other noises may be heard between the units. Therefore, I am not satisfied that the barking is significant or unreasonable and not just day to day barking such as when someone is entering the rental unit.

Although the Landlord also testified as to the Tenant's dog biting him and his dog, I do not find any further evidence to establish this claim.

Therefore, as I am not satisfied that the Tenant's dogs are causing *significant* interference or *unreasonable* disturbance, the Tenant is successful with her application to cancel the One Month Notice. This tenancy continues until ended in accordance with the *Act*.

As for the Tenant's application to suspend or restrict the Landlord's right to enter the rental unit, I dismiss this claim without leave to reapply. I accept the testimony of both parties that the Landlord provided notice to enter in February 2019 and although he did not attend the rental unit, that no further notice to enter has been provided. Therefore, I find that I do not have sufficient information before me to establish that the Landlord was in breach of Section 29 of the *Act* in terms of a landlord's right to enter the rental unit and accordingly find that no orders are necessary.

### Conclusion

The One Month Notice dated February 1, 2019 is cancelled and of no force or effect. This tenancy continues until ended in accordance with the *Act*.

The Tenant's application to suspend or restrict the Landlord's right to enter 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: March 18, 2019

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Residential Tenancy Branch