



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GUR KARTAR HOLDING LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes:** CNC OPC MT

### **Introduction**

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The landlord requested:

- an Order of Possession for cause pursuant to section 55.

The tenant requested:

- more time to make an application to cancel the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 66, and
- cancellation of the landlord’s 1 Month Notice to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47.

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”). In accordance with section 89 of the *Act*, I find that both the landlord and tenant were duly served with each other’s Applications.

The tenant confirmed receipts of the landlord’s evidentiary materials. In accordance with section 88 of the *Act*, I find that the tenant was duly served with the landlord’s evident.

The tenant confirmed receipt of the 1 Month Notice dated March 4, 2019, which was sent to the tenant by registered mail on March 4, 2019. In accordance with sections 88 and 90 of the *Act*, I find that the 1 Month Notice was deemed served to the tenant on March 9, 2019, five days after mailing.

Section 47 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. The tenant filed their application on March 18, 2019, nine days after the date the tenant is deemed to have received the 1

Month Notice. As the tenant filed their application within the required period, the tenant's application to dispute the 1 Month Notice for Cause will be considered, and their application for more time to apply is not required.

Section 47 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. The tenant applied for more time to make their application for dispute resolution. The tenant applied for

### **Preliminary Issue - Service of the Tenant's Evidentiary Materials**

The landlord indicated in the hearing that they were unable to view the evidence provided on a CD by the tenant. The tenant testified that they had served the landlord their evidentiary materials by way of regular mail. The landlord acknowledges receipt of the remainder of the tenant's evidence, and indicated in the hearing that they had no issue with the admittance of the tenant's evidentiary materials with the exception of the CD.

Residential Tenancy Branch Rules of Procedure 3.10.5 states the following about confirmation of access to digital evidence.

#### **3.10.5 Confirmation of access to digital evidence**

The format of digital evidence must be accessible to all parties. For evidence submitted through the Online Application for Dispute Resolution, the system will only upload evidence in accepted formats or within the file size limit in accordance with Rule 3.0.2. Before the hearing, a party providing digital evidence to other party must confirm that the other party has playback equipment or is otherwise able to gain access to the evidence.

Before the hearing, a party providing digital evidence to the Residential Tenancy Branch directly or through a Service BC Office must confirm that the Residential Tenancy Branch has playback equipment or is otherwise able to gain access to the evidence. If a party or the Residential Tenancy Branch is unable to access the digital evidence, the arbitrator may determine that the digital evidence will not be considered.

If a party asks another party about their ability to gain access to a particular format, device or platform, the other party must reply as soon as possible, and in any event so that all parties have seven days with full access to the evidence and the party

submitting and serving digital evidence can meet the requirements for filing and service established in Rules 3.1, 3.2, 3.14 and 3.15.

Regardless of how evidence is accessed during a hearing, the party providing digital evidence must provide each respondent with a copy of the evidence on a memory stick, compact disk or DVD for its permanent files.

In consideration of RTB Rule 3.10.5, I find that the tenant did not confirm with the landlord whether they had the ability access the evidence on the CD. I am satisfied that the landlord was unable to view the evidence contained on the CD, and accordingly, the evidence contained on the CD will be excluded. As the landlord confirmed receipt of the remainder of the tenant's evidence, the remaining evidence is considered duly served, and admitted for the purposes of this hearing.

### **Issues**

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

### **Background and Evidence**

This tenancy began on September 1, 2017, with monthly rent currently set at \$1,000.00 per month, payable on the first of each month. The tenant signed a new month-to-month tenancy agreement on July 1, 2018 effective September 1, 2018. The landlord holds a security deposit of \$500.00. The tenant continues to reside in the rental unit.

The landlord served the tenant with a 1 Month Notice To End Tenancy dated March 4, 2019 providing the following grounds:

1. The 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.

Both parties provided a copy of the 1 Month Notice in their evidentiary materials.

The landlord testified in the hearing, as well as called several witnesses. The landlord testified that they had received several complaints about the excessive noise and disturbance originating from the tenant's rental unit. The landlord included in evidence 6 warning letters sent to the tenant regarding the issue. The landlord testified that they have been patient, and have offered the tenant alternative accommodation in order to

address the issue. The landlord testified that the tenant refused to accommodate by accepting the offer, and the issue is still ongoing.

The tenant disputes that the noise and disturbance is from her rental unit. The tenant also disputes the offer by the landlord to move to another rental unit located in the building. The tenant testified that at the beginning of the tenancy she had informed the landlord that she does not want to reside on the ground or first floor due to security concerns.

The landlord's witnesses expressed great frustration with the noise and disturbance, describing the noise as loud walking, doors closing, crashing, and furniture being dragged across the floor. The witnesses both called the police, and were informed that that they must address the matter with the landlord. The witnesses testified that the issue has caused the relationship between the tenant and other occupants to be strained, resulting in threatening behaviour from the tenant including yelling and accusations. The landlord feels that they have tried their best to accommodate the tenant, and feel they have no choice but to end this tenancy. The landlord agreed to extend the effective date of the 1 Month Notice to June 30, 2019.

### **Analysis**

While I have turned my mind to all the documentary evidence properly before me and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below

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. As the tenant filed her application within the required period, and having issued a notice to end this tenancy, the landlord has the burden of proving they have cause to end the tenancy on the grounds provided on the 1 Month Notice.

In this case the landlord selected on 1 Month Notice that "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" as the reason for why they wish to end this tenancy.

RTB Policy Guideline #32 speaks to the meaning of “Illegal Activity”, and what may constitute "illegal activity" and circumstances under which termination of the tenancy should be considered

***The Meaning of Illegal Activity and What Would Constitute an Illegal Activity***

*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.*

*The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.*

*In considering whether or not the illegal activity is sufficiently serious to warrant terminating the tenancy, consideration would be given to such matters as the extent of interference with the quiet enjoyment of other occupants, extent of damage to the landlord's property, and the jeopardy that would attach to the activity as it affects the landlord or other occupants.*

I have considered the evidentiary materials submitted by the landlord, as well as the witness testimony in this hearing. As stated above, the burden of proof falls on the landlord to support their claim. In this case the onus is on the landlord to demonstrate that the tenant's behaviour would be considered illegal, and whether this illegal activity is serious enough to warrant the termination of this tenancy.

Tenants have a right to quiet enjoyment as stated in section 28 of the *Act* as stated below.

**Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following...

(b) freedom from unreasonable disturbance;...

(d) use of common areas for reasonable and lawful purposes, free from significant interference.

Although I sympathize with the tenants and occupants in this building, and although I acknowledge the patience and diligence of the landlord in trying to address the concerns and complaints of their tenants in trying to find a resolution that ensures the protection of the rights of their tenants under section 28 of the *Act*, I am not satisfied that the landlord has provided sufficient evidence to support that the tenant has engaged in any illegal activity, especially illegal activity of a serious enough nature that would warrant the end of this tenancy.

I find that the landlord had not provided sufficient evidence to demonstrate that this tenancy should end on the basis of the 1 Month Notice as stated above. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice dated March 4, 2019, and this tenancy is to continue until ended in accordance with the *Act*.

### **Conclusion**

I allow the tenant's application to cancel the 1 Month Notice. The 1 Month Notice dated March 4, 2019 is of no force or effect. This tenancy continues until 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: May 13, 2019

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Residential Tenancy Branch