



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, LRE, OPT, AAT, LAT, FFT

### Introduction

This hearing was convened as the result of the tenant's application for dispute resolution under the Residential Tenancy Act (the "Act"). The tenant applied for an order cancelling the 1 Month Notice to End Tenancy for Cause (the "Notice") issued by the landlord to the tenant, for an order requiring the landlord to comply with the Act, the Regulations, or the tenancy agreement, an order suspending or setting conditions on the landlord's right to enter the rental unit, an order granting the tenant an order of possession for the rental unit, an order allowing the access to the rental unit by the tenant and their guests, an order allowing the tenant to change the locks to the rental unit, and for recovery of the filing fee paid for this application.

The tenant, the landlord, her daughter/agent, CS, and their legal counsel attended, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

At the outset of the hearing, both parties confirmed receipt of the other's evidence.

Thereafter the participants were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, question the other party, and make submissions to me.

I have reviewed all oral, digital, and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (the "Rules"); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

### Preliminary and Procedural Matters

I have determined and informed the tenant that the portion of her application relating to any issues other than her request to cancel the landlord's Notice is unrelated to the primary issue of disputing the Notice. As a result, pursuant to section 2.3 of the Rules, I have severed the tenant's Application and dismissed that portion, **with leave to reapply**.

There were several issues raised in the documentary evidence submitted by the landlord. The evidence showed that the landlord's daughter, CS, was granted a durable power-of-attorney for both the landlord and her father, RS.

CS submitted an affidavit, requesting certain relief as the agent for the landlord, as follows:

1. A declaration that the Act is of no force and effect as the landlord and tenant shared bathroom and kitchen facilities when the tenancy agreement was entered into;
2. A declaration that the tenancy agreement entered into between the parties on April 19, 2019, is of no force and effect due to the 10 year length of tenancy and as the \$100.00 monthly rent does not cover the cost of taxes and utilities for the Lands; and
3. A declaration that the tenancy agreement is of no force or effect as the landlord was under duress and that the landlord did not understand the contents of the tenancy agreement.

I will address those issues and requests in the Analysis portion of my Decision.

### Issue(s) to be Decided

Has the landlord submitted sufficient evidence to prove that they have cause to end this tenancy?

Is the tenant entitled to recovery of her filing fee?

### Background and Evidence

The written tenancy agreement submitted by the tenant shows that this tenancy began on April 19, 2019, for a 10 year, fixed term, ending on May 31, 2029. Monthly rent is \$100.00 and the tenant did not pay a security deposit.

The tenant and the landlord are daughter/mother and the rental unit is listed as the "Unit below Garage". The undisputed evidence is that this rental unit is part of the property owned by the landlord and at one time, her husband/tenant's father, RS. The affidavit of RS, submitted into evidence by the landlord, states that he signed over the title to the home to the landlord; however, the landlord promised to hold one-half of the net value of the home in trust for him. I further note that the affidavit before from me from RS is incomplete and the signature page is missing.

After preliminary matters were discussed and prior to starting the hearing on the merits of the Notice, I determined that the tenant had filed her application in dispute of the Notice within the 10 days of receiving it, which was the time frame required by the Act.

As I made that determination, the landlord was informed that they now had the onus to prove at least one of the causes listed on the Notice, and as such, would be proceeding first in the hearing.

At the beginning of the hearing, only CS, the landlord's legal counsel, and the articulated student were in the office where these parties were seated. I was informed that the landlord was in another room, but available. I questioned CS and the legal counsel as to the landlord's ability to provide evidence and was informed by CS that the landlord has issues "with understanding when someone takes advantage".

With that in mind and due to CS having been granted the power-of-attorney, CS began the hearing representing the interests of the landlord. I did, however, inquire of CS if she had personal, first-hand knowledge of the issues around the causes listed on the Notice so that she could provide her testimony. CS said that she did.

I note that a copy of the power-of-attorney in favour of CS over the landlord was not before me and had not been submitted into evidence. The tenant submitted that she had not received a copy of the power-of-attorney in evidence; however, the landlord's legal counsel said that he was looking at a copy of the document. Additionally the tenant confirmed that she had seen a power-of-attorney in favour of CS. I accepted that CS did have power-of-attorney over the landlord.

I find it important to note that the tenant submitted a document which shows that she has a current health care power-of-attorney for her mother and stated further that her mother had been declared mentally competent by a public agency. There was no evidence substantiating this statement.

The tenant submitted further that up until the time her mother left her home and started living in a local care home sometime in April 2019, she looked after her own bank account, shopping, and some housekeeping.

The Notice submitted into evidence by the tenant was dated May 8, 2019, was served by attaching the document to the tenant's door on May 9, 2019, according to the landlord, and listed an effective move-out of date of June 15, 2019.

The causes listed on the Notice alleged that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

CS began her testimony in support of the Notice by stating that her mother and father want to sell the residential property to pay for their anticipated care home expenses.

At that point, I told CS that this was unrelated to the causes that were listed on the Notice and that her oral evidence should be directed only to the causes on the Notice.

At this point, the landlord's legal counsel asked if he could speak privately with his client, CS, and he was allowed to do so. During that period, the tenant asked if she should stay on the line, and I said yes; however, no further words were exchanged during that time. When the legal counsel returned to the hearing, he stated the landlord would testify and asked if CS should stay present in the hearing.

When considering whether the landlord was able to adequately represent her interests, I was informed that she would be able to provide direct evidence and was able to speak for herself, with guidance from her legal counsel. Out of an abundance of caution and to provide a fair hearing for all parties, I then determined that CS would serve now more in the role of a witness and would need to leave the room. The proviso was that she could return if later on it appeared her mother would need her assistance during the hearing.

The landlord submitted that when the tenant moved into their home in 2018, they had another tenant, AM, living with them, in an extra bedroom. The tenant began residing in the 2<sup>nd</sup> spare bedroom in the main home. The landlord submitted that although AM lived in the spare bedroom, she stored some of her belongings in the garage apartment, which is the rental unit and the subject of this dispute. When AM left, the tenant told her mother she wanted to live in the garage apartment. On April 19, 2019, the tenant came to her mother with a written tenancy agreement and cash of \$100.00 for the first month's rent. The landlord stated that she still has the cash and has not deposited it into her account.

The landlord submitted that RS did not like living with the tenant in the house and wanted to move out, which later he did.

The landlord submitted that the tenant interfered with AM. I note the undisputed evidence is that AM moved out in March 2019.

When CS returned to the hearing, she submitted that she was informed that problems within the residential property developed in February 2019. CS submitted that her father, RS, was not able to live in the home and moved out on April 2, 2019, as social services said he was at risk if he stayed there.

CS' documentary evidence, in an affidavit, states that the landlord did not approve of the contents of the written tenancy agreement and that her parents believe they need the money from the sale of the home to afford living at the care home in which they now both reside.

*Tenant's response-*

The tenant submitted that she wholly disputes any allegations of wrongdoing and that her mother wanted to give her a long-term, safe and secure place to live, which was the reason for the written tenancy agreement with a 10 year tenancy.

Through her written statement submitted as part of her evidence, the tenant states that she and her mother were the victims of physical and mental abuse from RS and that both feared for their safety. The tenant submitted that her parents are both the victims of her siblings' manipulations.

Through her written evidence, the tenant states that her mother is mentally competent to manage her own affairs, but is subject to the intimidation of her siblings.

I note that the personal representation agreement, executed by the landlord and granting the tenant her health care power-of-attorney, also includes that the tenant is granted the power to make personal care and financial decisions for her mother in the event a medical doctor declares that the landlord is unable to make those decisions.

### Analysis

Based on the foregoing evidence, and on a balance of probabilities, I find as follows:

I find it important to note that both parties submitted a significant amount of evidence, all of which I have reviewed prior to the hearing and following the hearing, prior to making this decision.

I refer to the evidence relevant to making my decision; however, it must be noted that a large part of the evidence pertained to matters unrelated to the primary issue, whether the Notice should be enforced or cancelled. Other evidence supported the tenant's portion of her application that were severed and dismissed with leave to reapply.

As previously stated, I will address the matters requested in CS' affidavit, as follows:

1. As I informed the parties at the hearing, I find that the Act does pertain to this dispute and is not excluded as the landlord and tenant once shared bathroom and/or kitchen facilities. When the tenant first moved into her parents' home in 2018, there was no tenancy agreement and they did share bathroom/kitchen facilities in the main home. The rental unit in question here under the written tenancy agreement, however, is a separate, self-contained garage unit and not part of the main residence and the tenant does not share bathroom and/or kitchen facilities with the landlord.
2. As I informed the parties at the hearing, I find no support under the Act, nor was evidence provided, that a 10 year tenancy should have no force or effect. From my reading of the written tenancy agreement, which is on the written tenancy agreement form provided on the Residential Tenancy Branch ("RTB") website, plus a separately prepared multi-page addendum, I find it shows a fully negotiated and executed contract. Whether the landlord's other family members agree with the terms, I find no evidence submitted that substantiates the landlord was not fully capable of executing this document. I reviewed the landlord's

signature on the Notice and the written tenancy agreement and both signatures were nearly identical.

I do note, however, that serious allegations were raised by both the tenant and her siblings against each other and regarding the mental and physical abilities of their parents. I, however, was not presented with medical proof of a mental limitation and it appears that both the tenant and CS have powers-of-attorney over the landlord.

Further, I was not presented evidence that it has been necessary to use either of these powers-of-attorney since being granted.

3. As to the third issue, I likewise find insufficient evidence was submitted by CS to prove that the landlord was under duress or did not understand the contents of the tenancy agreement when it was executed.

#### *Cancellation of the Notice-*

As to the issue of the Notice, under section 47(1)(d)(i) and (ii), a landlord may issue to the tenant a notice seeking to end the tenancy if the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord and seriously jeopardized the health or safety or lawful right of another occupant or the landlord, as alleged here.

The landlord bears the burden of proving she has grounds to end this tenancy and must provide sufficient evidence to support the causes listed.

As the landlord and CS, her representative, began by telling me about incidents that began happening in 2018, I instructed them I required information recent and relevant to the instance of issuing the Notice.

In the case before me, while the landlord and CS alleged an incident surrounding RS at the beginning of April 2019, the written tenancy agreement was executed on April 19, 2019, giving the tenant a 10-year tenancy for the garage unit. I therefore find this alleged incident too remote in time to be of issue for this Notice.

Additionally, I find the landlord when providing her direct testimony, that she was coherent, coherent, and did not have any problems with understanding my questions.

Overall, I find the landlord has not presented evidence of any issue with the tenant from April 19, 2019, when the tenancy began, through May 8, 2019, which may have

prompted the issuance of the Notice less than three weeks later. Any issues, whether real or perceived, are historical in nature and prior to the start of the tenancy and I find that the Notice was not issued in a reasonable time frame. I therefore find the issues are not current or at issue at present, and in addition, pre-date the tenancy.

Overall, when reviewing the landlord's evidence, I find insufficient evidence to show that on the day the Notice was issued, the landlord had cause to end this tenancy.

As a result, I find the landlord's 1 Month Notice to End Tenancy for Cause dated May 8, 2019, and issued on May 9, 2019, for an effective move out date of June 15, 2019, is not supported by the evidence, and therefore has no force and effect. I order that the Notice be cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

I allow the tenant recovery of her filing fee of \$100.00, and, as her monthly rent is \$100.00, direct that she not make her next or a future month's rent payment in satisfaction of her monetary award. The tenant should inform the landlord when she is withholding this amount. The landlord may not serve the tenant a 10 Day Notice to End Tenancy for Unpaid Rent in this instance.

### Conclusion

I grant the tenant's application seeking cancellation of the landlord's Notice and the Notice is cancelled with the effect that the tenancy will continue until ended in accordance with the Act.

The tenant is directed to withhold a future month's rent payment of \$100.00 in satisfaction of her monetary award for recovery of the filing fee.

The portion of the tenant's application dealing with any issues other than her request to cancel the landlord's Notice has been severed and dismissed, with 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: June 27, 2019

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Residential Tenancy Branch