



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAMARGUE INV  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes           CNC, LRE, OLC, RR

### Introduction

This hearing was convened by way of conference call in response to cross Applications for Dispute Resolution filed by the parties.

The Tenant filed his application May 13, 2019 (the "Tenant's Application"). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated April 30, 2019 (the "Notice");
- To suspend or set conditions on the Landlord's right to enter the rental unit;
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement; and
- To reduce rent for repairs, services or facilities agreed upon but not provided.

The Landlords filed their application May 15, 2019 (the "Landlords' Application"). The Landlords applied for an Order of Possession based on the Notice.

J.E., L.E., J.B. and R.K. appeared at the hearing for the Landlord. The Tenant appeared at the hearing. I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules of Procedure (the "Rules"), I told the Tenant I would only consider his dispute of the Notice and would dismiss the remaining issues with leave to re-apply. The remaining issues are dismissed with leave to re-apply. This does not extend any time limits set out in the *Act*.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing packages and evidence. The Tenant confirmed he received the hearing package and evidence for the Landlords' Application. The Landlords had not received the hearing package for the Tenant's Application. The Landlords had received the Tenant's evidence. J.E. confirmed she

was fine with me hearing the Tenant's Application given it raises the same issue as the Landlords' Application.

At the end of the hearing, the Tenant said he wanted to wait until he got legal aid to deal with this matter. The Tenant had not raised this as an issue at the outset of the hearing. I told the Tenant I was going to be deciding the matter based on the written materials and testimony provided at the hearing and would not be adjourning the matter. I told the Tenant that he needed to have arranged to have a lawyer present at the hearing if he wanted to be represented by legal counsel. The Tenant could not point to any evidence showing he had taken steps to obtain legal counsel or have legal counsel attend the hearing. Given this, I did not adjourn the hearing to allow the Tenant to obtain legal counsel.

The parties were given an opportunity to present relevant evidence, make relevant submissions and ask relevant questions. I have considered all testimony provided and all documentary evidence submitted. I will only refer to the evidence I find relevant in this decision.

I note that this hearing ran over the one hour set for it. I confirmed with the agents for the Landlords that they did not want to adjourn the matter and were content to rely on their written material and testimony. The Tenant was given an opportunity to make further submissions and indicated he had no more to say. The Tenant later tried to provide further submissions; however, they were unrelated to the issues before me.

#### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession based on the Notice?

### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The landlord name on the agreement is different from the Landlords named in the style of cause. J.E. testified that the agreement has always been with the company Landlord. The Tenant thought he originally entered into an agreement with a different company; however, agreed that the company Landlord is currently his landlord.

The tenancy started April 01, 2001 and is a month-to-month tenancy. The parties did not agree on the rent amount but agreed it is due on or before the first day of each month.

The Notice was submitted as evidence. It is addressed to the Tenant and relates to the rental unit. It is signed and dated by J.E. It has an effective date of May 31, 2019. The grounds for the Notice are as follows:

1. Tenant or a person permitted on the property by the tenant has:
  - a. significantly interfered with or unreasonably disturbed another occupant or the landlord; and
  - b. seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
2. 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 or the landlord.
3. Tenant has caused extraordinary damage to the unit or property.
4. Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

J.E. testified that she posted both pages of the Notice to the door of the rental unit April 30, 2019. The Landlords submitted a Certificate of Service in support of this. J.E. said she tried to hand the Notice to the Tenant, but he would not take it. J.E. testified that the Tenant took the Notice off the door within 15 minutes and that she saw him take it. J.E. testified that the Tenant was in the lobby reading the Notice on April 30, 2019. J.E. could not point to evidence showing the Tenant took the Notice off his door April 30, 2019.

At first, the Tenant said he did not receive the Notice. I pointed out that he must have received it because he disputed it. The Tenant then said he recalled taking the Notice off his door. He could not say when he did this. He said he was pretty sure he only received one page of the Notice.

J.E. testified as follows in relation to the grounds for the Notice. The Tenant used to work on cars in the parking lot of the building. He would do this every day. He would be drilling and dropping tools. This was in breach of the tenancy agreement. J.E. referred to a letter from

another tenant in this regard submitted as evidence and photos of the Tenant spraying his vehicle. J.E. testified that this other tenant moved out because of this issue.

R.K. testified as follows. The Tenant has caused repeated issues at the building over time. Last December, the Tenant had put items on his balcony, covered them with a tarp and hung four water jugs from this. This was a security and safety issue. A photo of this was submitted in evidence. The Tenant was given a notice about clutter on his balcony. A copy of this was submitted in evidence. The Tenant "lost it" after receiving the notice to clean. The Tenant was threatening, swearing and screaming. The Landlords submitted a witness letter from a tenant whose vehicle was hit by the Tenant the same night he received the notice to clean. The Landlords had submitted a second letter from another tenant about this issue.

J.E. testified that the balcony has been an ongoing issue. She said the Tenant would remove stuff but then over time items would build back up on the balcony. J.E. said the tarp with the hanging jugs of water was on the balcony for five or six days.

J.E. submitted that the following actions of the Tenant jeopardized the health or safety of others. The tarp and hanging water jugs on the balcony. The fumes from the Tenant working on vehicles in the parking lot. The Tenant's anger after receiving the notice to clean which resulted in him hitting another tenant's vehicle in the parking lot.

J.B. submitted that the Tenant scratched the elevator door causing extraordinary damage to the Landlords' property. He referred to a photo in evidence showing the scratch.

J.E. further testified as follows. After hitting the other tenant's vehicle, the Tenant "amped up". He was taking photos of other tenant's balconies and going around the property with binoculars. The Tenant started following L.E. around which caused L.E. to feel uncomfortable and is harassment.

J.E. testified that the Tenant has engaged in illegal activity by not having insurance on his cars parked on the property. She said there is the "stalking thing" which I understand to be the allegations relating to L.E. She also referred to two letters from other tenants in relation to this. She submitted that one of the letters refers to the Tenant yelling at another tenant while they walked down the road. J.E. testified that the Tenant pried open the mailbox in the building and then put tape over the lock. She said the mailbox was like this for a few days. The Landlords submitted a letter about this.

The Tenant acknowledged that the photo in evidence is in fact his balcony. He acknowledged that he had a tarp over items on his balcony and four water jugs hanging from the tarp. He said it was like this for three days.

The Tenant confirmed he received the notice to clean his balcony. The Tenant denied that he was threatening and screaming after receiving the notice to clean. The Tenant said he got the notice to clean April 23<sup>rd</sup> and not April 24<sup>th</sup>.

The Tenant submitted that the evidence relating to his balcony is “all accusations” and is hearsay. The Tenant denied that he received numerous warnings about his balcony being an issue.

In relation to J.E.’s testimony that the Tenant worked on his vehicles in the parking lot causing fumes, the Tenant testified that he cleaned his vehicles and submitted that there is no proof he worked on his vehicles. The Tenant denied that he did so.

In relation to the allegation that the Tenant ran into another tenant’s vehicle, at first the Tenant said this is false. He then said something about requiring a lawyer to get the necessary papers. The Tenant then testified that this incident occurred on the 18<sup>th</sup> not the 24<sup>th</sup>.

The Tenant denied that he scratched the elevator in the building.

The Tenant also denied that he “amped up” after receiving the notice to clean. He denied that he was taking photos of balconies or going around with binoculars as suggested by J.E. The Tenant denied that he has been following L.E. around.

The Tenant testified that all his vehicles are insured and he has no unlawful vehicle in the parking lot.

The Tenant disputed the contents of the witness letters submitted as evidence and denied that they are true.

The Tenant agreed that he tried to change the lock on the mailbox. He said the lock he bought to put on it did not work so he replaced the original one the next day.

The Landlords submitted a written timeline of events. I have only considered the events that occurred prior to the Notice being issued as the issue before me is whether the Landlords had grounds to issue the Notice.

Further, the Landlords have raised issues that occurred in 2006 and 2007. I do not find these relevant given they occurred more than ten years ago.

The Landlords raise an issue in relation to “hoarding” in 2016; however, acknowledge that the state of the unit no longer posed a hazard in this regard after June 21, 2016.

The Landlords raise the following further issues in the timeline:

- The Tenant was sent a letter July 12, 2016 asking him to clean the wall and pavement where there was over spray from painting and grease spots. I understand this to be related to the Tenant working on his vehicles in the parking lot. A letter about this was submitted in evidence and it appears it was sent July 12, 2018 and not in 2016.
- The Tenant was sent a letter June 17, 2018 about not working on his cars in the parking lot. This letter is in evidence.
- Tenants complained about the Tenant working on vehicles in the parking lot July 17, 2018. The Tenant lost his parking privileges and was told to park on the street.
- The Tenant was told on December 04, 2018 to clean his balcony as it posed a risk.
- All residents, including the Tenant, were sent a letter on April 24, 2019 about keeping their balconies clean. A copy of this was submitted as evidence. It states that excessive storage of items is a fire hazard, is unsightly and in violation of the Residential Tenancy Act. It states that failure to comply with this material term will be in breach of the tenancy agreement and is grounds for eviction.
- On April 24, 2019, the Tenant came to the Manager's apartment and began screaming that they were harassing him.
- On April 24, 2019, the Tenant drove his brakeless car onto the parking lot and ran into another tenant's parked vehicle causing damage to both vehicles.

The Landlords submitted evidence in relation to issues back in 2007 and 2010. I have not considered these given how dated these issues are.

The Landlords submitted an email from a tenant dated July 17, 2018 making a complaint about the smell caused by the Tenant spray painting his truck. The tenant provided photos of the Tenant spraying his vehicle on July 10, 2018.

The Landlords submitted evidence showing the Tenant received the notice to clean on April 24, 2019.

The Landlords submitted a photo from December 04, 2018 showing the Tenant's balcony with a tarp over items and water jugs hanging from it.

The Landlords submitted a signed letter from S.H. about the incident on April 24, 2019 with the vehicles. It states that he saw the Tenant drive erratically through the lower apartment parking lot. It states that the Tenant crashed into S.H.'s truck. It states that another tenant came outside and the Tenant became belligerent and verbally abusive towards that individual. It states that S.H. told the Tenant to calm down and he did. It states that the Tenant attempted to fix S.H.'s truck and when S.H. told him this was unsatisfactory the Tenant said he was going to file an ICBC claim and "fuck [his] life up".

The Landlords submitted a typed letter with no name or signature on it. I have not considered this piece of evidence given the lack of information and signature.

The Landlords submitted a signed letter dated May 07, 2019 from T.M. It states that the Tenant used the parking lot as a garage from 2016 to 2018. It states that the Tenant would yell and throw tools when asked to be quiet or move. It states that T.M. has lost four roommates because of the Tenant's behaviour. It states that T.M. has witnessed the Tenant start fights with other residents several times. It states that the Tenant started a fight with another tenant April 04, 2019. It states that the Tenant approached her on April 17, 2019 and got extremely close to her face and started yelling about nothing that made sense. It states that the Tenant backed into another tenant's truck on April 24, 2019. The letter states that T.M. avoids the Tenant at all costs.

The Landlords submitted a signed letter from M.Z. It is dated May 31, 2019. Someone has indicated the date should be April 30, 2019. I understand the letter to state that the Tenant has been harassing M.Z. although this is misspelled. It states the Tenant has been coming to M.Z.'s apartment banging on the door, following M.Z. down the street and yelling at M.Z. when they are on their deck.

J.E. submitted a signed letter which states as follows. Her and L.E. have managed the building since May 2013. The Tenant has a very bad temper and has had disputes with many tenants in the building. They have talked to the Tenant about his behaviour. The Tenant will stop the behaviour for a time and then go back to breaking rules. They lost a tenant due to the Tenant working on his vehicles on the property. The Tenant spent April 24, 2019 in a rage after receiving the notice to clean. Tenants complained that they were afraid of the Tenant. Later that evening they heard a car revving and smoking in the parking lot. The Tenant was moving his car from the street to the parking lot and hit another vehicle. The Tenant was agitated on April 25, 2019 and was walking around the building taking photos of tenant's balconies and looking in windows of cars.

The Tenant's materials consist of handwritten notes on the Landlords' evidence. Most of these notes are simply disputing the contents of the evidence. Some notes state that the Tenant never received the letters in evidence. The Tenant submitted written statements which I have reviewed; however, find very difficult to understand.

The Tenant submitted numerous photos and notes. I am unable to determine the relevance of most of these. The Tenant has made submissions about the witnesses who provided letters for the Landlords.

The Tenant submitted a CAUTION NOTICE TO TENANT dated September 28, 2017 about ongoing noise complaints from other tenants and storage of furniture in the parking stall.

The Tenant submitted a copy of the notice to clean sent to him specifically. It states that excessive storage of multiple items is a fire hazard, is unsightly and in violation of the Residential Tenancy Act and must be removed. It states that failure to comply with this material term within one week will be in breach of the tenancy agreement and grounds for eviction.

### Analysis

Pursuant to rule 6.6 of the Rules, it is the Landlords who have the onus to prove the Notice.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

The Notice was issued under section 47 of the *Residential Tenancy Act* (the “Act”).

Based on the testimony of J.E. and the Certificate of Service submitted, I accept that the Notice was posted on the door of the rental unit April 30, 2019. I find the Notice was served on the Tenant in accordance with section 88(g) of the *Act*. In the absence of further evidence proving the Tenant took the Notice off the door on April 30, 2019, I cannot accept that he did. The Tenant did not know when he received the Notice. The Tenant is deemed to have received the Notice May 03, 2019 pursuant to section 90(c) of the *Act*.

Pursuant to section 47(4) of the *Act*, the Tenant had 10 days to dispute the Notice. The Tenant’s Application was filed May 13, 2019, within the time limit.

I am not satisfied based on the submissions and written materials of the Landlords that the Landlords have proven the Notice.

As stated, I do not find the evidence relating to incidents in 2006, 2007 or 2010 relevant given it has been at least nine years since these occurred. If the Landlords believed these incidents justified evicting the Tenant, they should have issued the Tenant a One Month Notice back then.

I am not satisfied that the Tenant working on vehicles in the parking lot justifies eviction. The evidence shows this was an issue in June and July of 2018, nine months prior to the Notice being issued. There is no evidence this continued to be an issue after June and July of last year. I do not find this to be a basis for an eviction notice issued in April of 2019.

I accept that the Tenant had items on his balcony covered in a tarp with water jugs hanging from the tarp as the Tenant acknowledged this. R.K. took the position that this was a security and safety issue. Yet there is no evidence showing the Landlord took steps in December of 2018 to address this with the Tenant or to proceed with an eviction on this basis. The notice to clean was not sent out until four months later and the Notice was not issued until four months later. Further, the Landlords have not submitted evidence regarding how long the balcony was like this. The Tenant said it was only like this for three days. The Landlords have not submitted any further evidence showing that the Tenant’s balcony continued to be an issue. The Landlords have not submitted any evidence showing the state of the Tenant’s balcony in April of 2019.



The agents for the Landlords testified that the Tenant “lost it” after receiving the notice to clean. The Tenant denied this. I do not put much weight on the fact that two of the agents testified to this as both agents were involved in the conference call and present for the statements of the other. I would expect further evidence showing the Tenant threatened, screamed or swore at others to be satisfied that this occurred.

I accept that there was an accident in the parking lot on April 24, 2019 given the witness letters. However, I do not accept that the Tenant knowingly drove a brakeless vehicle as the Tenant did not acknowledge this and there is no evidence before me showing this. Further, I do not accept that the Tenant was driving erratically in the absence of further evidence to support this. I have considered that the witness statement from S.H. is not an unbiased account of events as it was his vehicle that was hit. I do not find that there is strong corroborative evidence of what occurred in relation to the driving. In the absence of further evidence that it was the Tenant’s anger that lead to the accident between the vehicles, I cannot accept that it was.

J.E. testified that the Tenant’s balcony has been an ongoing issue, yet the Landlords’ evidence does not support this. There are no photos showing this has been an ongoing issue. There is no evidence of a history of letters being sent to the Tenant about this issue.

I do not accept that the Tenant scratched the elevator door. He denied this. The Landlords have not submitted any evidence that it was the Tenant who did this.

I do not accept that the issue with the Tenant taking photos of balconies or looking in vehicles occurred prior to the Notice being issued as the timeline of events submitted by the Landlords show it occurred after the Notice was issued.

I do not find that the Tenant allegedly following L.E. is a basis for the Notice in the absence of any testimony or details from L.E. about this.

The Landlords have failed to show any recent illegal activity on the part of the Tenant. The Landlords have provided no evidence that the Tenant had or has uninsured vehicles in the parking lot. I do not accept that the Tenant has been “stalking” L.E. in the absence of further evidence proving this. The mailbox issue occurred after the Notice was issued according to the timeline of events and evidence submitted.

I find the letter from T.M. to be the most compelling evidence submitted by the Landlords. However, I find that the statements about roommates leaving and the Tenant starting fights with other tenants are not supported by evidence. I would expect to see statements from other tenants if the Tenant was starting fights with people in the building. I do not find the letter particularly useful in determining what occurred with the vehicle accident April 24, 2019.

I do not find the letter from M.Z. compelling. First, I do not accept that it was meant to be dated April 30, 2019 as it appears someone other than M.Z. has written this on the letter. Second, the letter lacks details about the allegations in it.

I find this case to be very close. However, I am not satisfied the Landlords have submitted sufficient compelling evidence showing the Notice is justified. I would expect to see further evidence such as further witness statements, more detailed witness statements, further photographic evidence and further written notices to the Tenant about his behaviour to find that the Notice is justified.

In the circumstances, I am not satisfied the Landlords have proven the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

### Conclusion

I am not satisfied the Landlords have proven the Notice. The Notice is cancelled. The tenancy will continue 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 *Act*.

Dated: July 02, 2019

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Residential Tenancy Branch