



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC FFT LRE OLC PSF**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order to restrict or suspend the landlord’s right of entry pursuant to section 70;
- An order for the landlord to comply with the *Act*, regulation and/or tenancy agreement pursuant to section 62;
- An order to reduce the rent for repairs, services or facilities agreed upon but not provided pursuant to section 65;
- An order requiring the landlord to reimburse the tenant for the filing fee.

Both parties attended the hearing and had full opportunity to provide affirmed testimony, present evidence, cross examine the other party, and make submissions.

The landlord acknowledged receipt of the tenant’s Notice of Hearing and Application for Dispute Resolution. The tenant acknowledged receipt of the landlord’s materials. Neither party raised issues of service. I find the tenant served the landlord in accordance with section 89 of the *Act*.

### *Preliminary Issue*

The tenants applied for multiple remedies under the *Act* some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all the grounds on the Tenants' application except for the following ground:

- Cancellation of a One Month Notice.

During the hearing, I encouraged both parties to explain to me the most recent and relevant examples of what their issues are as they relate to this Notice, given they have a history of multiple arbitrations over the past several years to which the parties referred.

#### Issue(s) to be Decided

Is the tenant entitled to an order dismissing the landlord's Notice? If not, is the landlord entitled to an order of possession pursuant to section 55(1)?

#### Background and Evidence

The parties agreed they entered into a residential tenancy agreement beginning January 2012 which is month-to-month. Rent is \$768.00 monthly payable on the first of the month. At the beginning of the tenancy, the tenant provided a security deposit of \$325.00 which the landlord holds.

The tenant stated the unit is a "cabin" and surrounding lot of about 1.5 acres (the equivalent of .6 hectare). The tenant testified he is using the lot as a tree nursery and is growing 600 young trees.

The landlord stated the tenant's property is unsightly, dirty, untidy and unsanitary. The landlord testified the condition has worsened over the years and has become unbearable to the landlord. The landlord stated he is concerned about the presence of rats, mosquitoes and rotting garbage. He fears damage to his property.

The landlord stated that he lives nearby and can see the unit, or parts of it, from his home where he and his wife have resided since 1975.

The landlord submitted labelled photographs in support of his application. One group of photographs were taken March 22, 2019 and the second group, May 24, 2019. The first group shows the following:

- the interior kitchen of the unit: the counter is covered with a variety of food containers, bottles, plastic bags and aluminum pans, some with unidentified contents;
- a portion of the yard in the photograph is mounded with a disordered pile of dozens of containers such as planting pots, large containers, and planting pot trays, some with unidentified contents;
- a portion of the yard has untidy stacks of plastic tarps, plastic containers, motorized equipment and other unidentifiable objects;
- the laundry area floor is covered with many boxes, garbage and containers heaped in disorder;
- the green house has various boxes, pieces of Styrofoam, containers and pots chaotically piled; and
- there is an outside bathtub which the landlord testified the tenant uses.

The second group of photographs are dated May 24, 2019. They are of the exterior of the unit and the contents are described as follows:

- A plastic sheet with pooled dark water;
- A series of items lining a driveway in a littered manner: a plastic laundry sink containing soil and shrubs, a pallet upon which are a toppled stack of plastic chairs, unidentified items, and the top of a camper;
- Five 2-gallon black plastic planting pots which appear to be empty or contain unidentifiable contents, a motorcycle, plastic sheeting lying on the ground, miscellaneous objects such as a length of wood;
- Various randomly situated containers and an overturned wheelbarrow.

The landlord testified to providing many written warnings to the tenant to clean up the unit; this is the landlord's third One Month Notice resulting in arbitration after the tenant applied to dismiss the Notices. The most recent letter of warning was dated March 10, 2019 giving the tenant to April 22, 2019 to clean up the property. The tenant

acknowledged receipts of many warnings from the landlord and said the landlord “has been trying to get rid of me for years”.

The landlord testified he inspected the unit on March 19, 2019 after providing the tenant with notice. The unit was in the same condition, that is, with substantial clutter, garbage and debris as described above and as reflected in the photographs.

Accordingly, the landlord issued the One Month Notice on April 26, 2019. The effective date of the notice was May 26, 2019 which the landlord extended during the hearing to July 31, 2019. The tenant acknowledged service of the One Month Notice. The form of the Notice contains many reasons for the landlord to select for the issuance of the Notice. In this case, the landlord selected the following:

*the “tenant or a person permitted on the property by the **tenant has engaged in illegal activity** that has, or is likely to*

- damage the landlord’s property, or*
- adversely effect the quiet enjoyment, security, safety or physical well-being of another occupant.*

[emphasis added]

The tenant stated that the photographs submitted by the landlord were an accurate depiction of the unit on the day the photographs were taken although he believed they were “cherry picked” to show the worst. The tenant disagreed with the landlord’s characterization of the state of the unit. The tenant acknowledged it was disorganized but stated that he has a busy operation and does his best to keep things tidy. He testified that everything in the pictures had a purpose. For example, the empty pots were “waiting to be planted”. The tenant said that the containers and pools of water, characterized by the landlord as fetid and a health hazard, contained unhealthy plants which he was trying to save by immersing their roots in water.

The tenant said that the landlord’s home is 350’ away and the landlord can only “barely” see the unit; the condition of the unit should therefore make no difference to the landlord.

In any event, the tenant stated that he had been working hard to bring organization to the unit and to clean-up; he had used an edge trimmer, got rid of dead plants and used soil, and removed the debris and recycling. However, the tenant did not submit any photographs in support of his claims.

The landlord testified that on June 4, 2019 he observed the exterior of the unit and the condition was unchanged.

### Analysis

In an application to dismiss a One Month Notice, the landlord has the onus of proving on a balance of probabilities that at least one of the reasons set out in the notice is met.

Section 47 states in part as follows:

#### **Landlord's notice: cause**

**47(1)** A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies: ...

(e) the tenant or a person permitted on the residential property by **the tenant has engaged in illegal activity** that

(i) has caused or is likely to cause damage to the landlord's property,

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

(iii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

[emphasis added]

The landlord relied on the causes in section 47 as underlined above.

The landlord testified that he is upset and distressed by the cluttered condition of the unit. The landlord expressed frustration at his fruitless efforts over years to convince the tenant to clean up the unit and that litter, garbage and unsightliness, has been increasing over the years. The landlord said he, the landlord, had an attractive home that he has occupied since 1975; he is disturbed and distressed by the condition of the unit visible from his home. I accept the landlord's evidence in this regard and find the landlord a credible witness.

However, the landlord has submitted no evidence that the tenant has "has engaged in illegal activity" as required under section 47(1)(e).

I therefore find that the landlord has *not* met the burden of proof on a balance of probabilities that the tenant has engaged in illegal activities as required under section 47(1)(e).

I therefore grant the tenant's application to dismiss the One Month Notice. The tenancy shall continue until it is ended pursuant to the tenancy agreement and the *Act*.

Conclusion

I order that the landlord's One Month Notice 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: June 12, 2019

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Residential Tenancy Branch