



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, LRE, MNDCT, OLC, FFT

### Introduction

On July 29, 2019, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking to set conditions on the Landlords’ right to enter pursuant to Section 70 of the *Act*, seeking a Monetary Order pursuant to Section 67 of the *Act*, seeking an Order for the Landlords to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing and had his witness, C.R., call into the hearing at a later point to provide testimony. Both Landlords attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Landlords with the Notice of Hearing and evidence package by hand on or around August 5, 2019 and the Landlords acknowledged that this package was received. Based on this undisputed evidence, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package. However, the Tenant acknowledged that he did not serve his pictures and audio evidence to the Landlords and he did not submit this evidence to the Residential Tenancy Branch either. As a result, the pictures and audio evidence would not be considered when rendering this decision.

The Landlords advised that they served their evidence by hand to the Tenant on September 5 and September 8, 2019 and the Tenant confirmed that he received this evidence. As service of this evidence complies with the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

As stated during the hearing, as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed the Landlords' Notice, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that complies with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, are the Landlords entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

#### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

The Landlords advised that the tenancy started on December 1, 2018; however, the Tenant stated that the rental unit was available on November 15, 2018 and he paid half the rent for that portion of the month. All parties agreed that rent is currently established at \$900.00 per month, due on the first day of each month and that a security deposit of \$450.00 was also paid. The parties did not sign a written tenancy agreement.

The Landlords advised that the Notice was served to the Tenant by hand on July 25, 2019 and the Tenant confirmed that he received this. The reasons the Landlords served the Notice are because the "Tenant or a person permitted on the property by the tenant

has 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.” The Notice indicated that the effective end date of the tenancy was August 31, 2019.

The Landlords advised that they advertised the rental unit as non-smoking and the Tenant smokes outside the rental unit, but also on occasion inside the rental unit despite being asked not to. They provided a written warning dated August 8, 2019 about smoking and submitted this letter, as documentary evidence, for consideration. They contend that the Tenant smokes in his bathroom, which is above their bedroom, so it is disruptive to their sleep. They advised that it happens less frequently now but before it would occur at 5:00 AM at least five times per week.

They stated that the Tenant accused them of spying on him in the rental unit and spreading rumours about how he lives to other people in the community, leading to him losing his job. They stated that the Tenant believes he has no privacy and does not feel secure in the rental unit. They submitted that in one conversation they had with him, he stated, “Stop glaring at me. I hate women, I hate all women. You keep lying to me. You are spying on me. I KNOW YOU ARE A FACIST[sic].” Landlord G.O. does not feel safe in the home and they have changed the locks.

They testified that the Tenant subscribes to beliefs pertaining to aliens and conspiracy theories, that he sent the Landlords emails regarding these theories and beliefs, and that he is extremely paranoid, which made them uncomfortable. Some of these emails were submitted as documentary evidence.

They planned a vacation in January 2019 but were not comfortable leaving their house unattended, so they had Landlord D.O.’s sister house sit. A letter outlining her experience was submitted as documentary evidence. She stated that the Tenant had an “emotional problem” and that he was convinced that there were cameras in the rental unit watching him. She advised that the Tenant invited her into the rental unit, that she did not observe any cameras, and that she could not hear the dogs backing upstairs, which contradicts the Tenant’s position that he can hear the Landlords talking about his activities in the rental unit. He also talked about his fear of aliens, that his co-workers were aliens as well, that Landlord D.O. was an alien and a fascist, and that the FBI was out to get him. On another occasion when she mentioned that the house would be for sale and that he would have to move, he stated, “Whatever - I’ll just burn the house down.” Finally, she stated that the Tenant has “sexual and mental issues” and that “he is a danger to himself.”

Landlord D.O. stated that there was an issue where it appeared as if a vehicle had been driven in a manner that sprayed gravel at the Landlords' property; however, he did not have evidence of who had committed this act. They submitted pictures as documentary evidence to support that this was happening.

The Landlords advised that the Tenant sunbathes on the property wearing inappropriate attire and they are unable to enjoy the use of their back deck due to this. In general, they feel harassed by the unfounded allegations and they are concerned with his threats of self-harm and of burning down the house. As well, Landlord G.O. is constantly in tears because of this stressful situation and it is affecting her mental health.

The Tenant advised that the Landlords knew that he was a smoker and he contends that he only smokes outside. He stated that the rental unit is humid and his windows to the bathroom are always open, so the fan likely draws the smoke upstairs into the Landlords' bedroom. As well, he stated that after he is done smoking, he brings the cigarette butts into the rental unit to throw away in the garbage can, though it did not occur to him to have a garbage can outside for this instead.

The Tenant's mother, C.R., believes that the Tenant would never smoke inside the rental unit as she has never seen him smoke inside any premises before. However, she cannot speak to this specific rental unit as she has never witnessed him smoking inside or outside.

With respect to the issue of him being spied on by the Landlords, he referred to his written submissions that were provided as documentary evidence. He keeps his windows covered and his door closed, so it is his belief that because people in the community are talking about his activities committed in the rental unit, that the Landlords must be watching him and spreading this knowledge around the community. He reported his concerns to the police and they advised him to provide some evidence of the Landlords spying on him, but he has been unable to provide anything tangible to the police for them to investigate further.

The Tenant stated that the accusations of his belief in aliens is slanderous and he questioned why the police were never called if he had threatened to burn down the house.

C.R. does not believe that the Tenant harasses the Landlords; however, she confirms that the Tenant does read a lot of material on the internet and that he often has

passionate beliefs and conversations regarding aliens, the Holocaust, and politics. She has cautioned him that he should not always believe everything that he reads, that some of his viewpoints are wrong and should not be shared, and that he continues to do so, oftentimes at his own detriment.

The Tenant questioned the credibility of Landlord G.O.'s sister as he stated that she had asked him to go to dinner with her and that she was then subsequently invited to the rental unit for dinner, which she gladly accepted. He also questioned the Landlords' submissions about being fearful given that they had provided him with keys to the entire property.

C.R. echoed that the credibility of Landlord G.O.'s sister should be questioned as the sister has spent time with the Tenant, that they have had dinners together, and that the Tenant has helped her in the past. While she has acknowledged that the Tenant has engaged in behaviours that are questionable, it is her belief that the Landlords' actions and behaviours are not sound either and they bear some burden in instigating the discord between the parties. She stated that the Landlords have been initiating many issues, but the Tenant is intentionally "rebellious on purpose because that is who he is."

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this decision are below.

In considering this matter, I have reviewed the Landlords' Notice to ensure that the Landlords have complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads 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:*

*(d) the tenant or a person permitted on the residential property by the tenant has*

*(i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,*

*(ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.*

With respect to these reasons on the Notice, the burden is on the Landlords to present persuasive evidence that supports their position for ending the tenancy. Regarding the smoking issue, I find it important to note that there is no written tenancy agreement. Therefore, there cannot be an enforceable term prohibiting the Tenant from smoking inside the rental unit. However, a tenancy may still end by virtue of this Notice if the Tenant chooses to smoke in the rental unit and it significantly, negatively impacts the Landlords. Given that the Landlords advised that the occurrence of smoke happens less frequently now and does not appear to be as significant anymore, based on their testimony, I do not find that their submissions and evidence are compelling enough to warrant an end to the tenancy for this reason.

Regarding the Landlords' submissions on the Tenant's beliefs, when two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. When reviewing the evidence and the testimony before me, the consistent evidence is that some of the Tenant's beliefs are perceived to be outlandish, disturbing, and not necessarily shared by the Landlords or by C.R. While I agree with the sentiment that these viewpoints are different and spreading them in the manner that the Tenant has been doing to uninterested parties is not recommended, I do not find that what the Landlords have provided in terms of evidence is compelling enough to support that this behaviour is beyond the threshold that constitutes a significant interference, an unreasonable disturbance, or a serious jeopardization of the health or safety or a lawful right of the Landlords.

With respect to the comment about burning the house down or about the allegation that the Tenant has "sexual and mental issues", I find it important to note that the parties have conflicting accounts of the relationship between the Tenant and Landlord G.O.'s sister and this disparity causes me to question the reliability of this person's submissions. I do not find that the Landlords have provided sufficient evidence to satisfy me of the legitimacy of the comments that the Tenant may have made.

Regarding the Landlords' suspicion that the Tenant may be responsible for driving in a manner that would spray gravel against their property, given that they acknowledge that they are uncertain of who is responsible for doing this, I do not find that the Landlords have substantiated an end of the tenancy on this point.

Finally, with respect to the Landlords' concerns about the Tenant sunbathing on the property, while the Landlords may be uncomfortable with the clothing options that the Tenant chooses to wear, this appears to me to be more of a personal disagreement with what may be considered appropriate. Based on the evidence presented, I am not satisfied that this issue would meet the threshold of ending the tenancy with the Notice.

As noted earlier, when the parties provide opposing, contradictory accounts, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their position. In this case, the Landlords must demonstrate that the significance of the incidents justifies that the tenancy should end. When reviewing the Landlords' evidence, I do not find that they have met the burden of proof to sufficiently satisfy me that the Tenant's behaviours constitute a significant interference or an unreasonable disturbance, or that the Tenant has seriously jeopardized the health or safety or a lawful right or interest of the Landlords.

However, I have considered the testimony of the parties and the totality of the evidence submitted, and I have weighed the parties' demeanour and actions in consideration of whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy. Based on what was presented during the hearing, and in conjunction with C.R.'s acknowledgement that the Tenant intentionally rebels on purpose, often at his own detriment, because "that is who he is", I do not doubt that many of the Tenant's behaviours and actions are occurring, and some of those may be troubling enough to warrant an end to the tenancy. I am just not satisfied that the Landlords have substantiated the significance of these issues sufficiently for this hearing. I find that should the Tenant continue to conduct himself in a manner to "rebel", those behaviours and actions could, more likely than not, form the basis for a future Notice. Consequently, the Tenant is on formal notice that continued behaviours or actions that are unacceptable or inappropriate may potentially jeopardize his tenancy.

Regardless, as I am not satisfied that the Landlords have sufficiently substantiated the grounds for ending the tenancy under the reasons that the Tenant "significantly interfered with or unreasonably disturbed another occupant or the landlord" or "seriously jeopardized the health or safety or a lawful right or interest of the landlord or another

occupant", I am not satisfied of the validity of the Notice. Ultimately, I find that the Notice is of no force and effect.

As the Tenant was successful in his claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this application and may withhold this amount from a future month's rent.

### Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of July 25, 2019 to be cancelled and of no force or effect. The tenancy shall 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 *Residential Tenancy Act*.

Dated: September 27, 2019

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Residential Tenancy Branch