



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding SUNSET PARK APARTMENTS and  
[tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of a One Month Notice to End Tenancy for Cause (One Month Notice), pursuant to section 47 of the *Act*.

Both parties attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The corporated landlord was represented by the landlord's agent herein referred to as "the landlord". The tenant attended with an advocate.

As both parties were present, service of documents was confirmed. The landlord confirmed receipt of the tenant's notice of dispute resolution proceeding package and evidence. The tenant confirmed receipt of the landlord's evidence. Based on the undisputed testimonies of the parties, I find that both parties were served in accordance with sections 88 and 89 of the *Act*.

### Preliminary Issue - Procedural Matters

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 tenant's Application is dismissed and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

Further to this, the standard of proof in a dispute resolution hearing is on a balance of probabilities. Usually the onus to prove the case is on the person making the claim. However, in situations such as in the current matter, where a tenant has applied to cancel a landlord's Notice to End Tenancy, the onus to prove the reasons for ending the tenancy transfers to the landlord as they issued the Notice and are seeking to end the tenancy.

### Issue(s) to be Decided

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

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony presented, not all details of the submissions and arguments are reproduced here. Only the aspects of this matter relevant to my findings and the decision are set out below.

A copy of the written tenancy agreement was submitted into evidence. The parties confirmed their understanding of the terms of tenancy as follows:

- The tenancy began on August 1, 2014 as a fixed-term tenancy scheduled to end on January 31, 2015. At this time, the tenancy continued on a month-to-month basis.
- Monthly rent of \$785.00 is payable on the first of the month.
- The tenant paid a security deposit of \$347.50 and a pet damage deposit of \$347.50, which continue to be held by the landlord.

The One Month Notice dated August 2, 2019, submitted into evidence, states an effective move-out date of September 30, 2019, with the following boxes checked off as the reasons for seeking an end to this tenancy:

*Tenant or a person permitted on the property by the tenant has:*

- *seriously jeopardized the health or safety or lawful right of another occupant or the landlord.*

*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.*

The “Details of Cause” section of the notice states the following:

*Has left verbally aggressive & threatening texts to a tenant. Also has been harassing & falsely accusing our worker of sexual harassment. We have evidence stating that this is a false accusation.*

The tenant confirmed he received the One Month Notice served to him by posting on the rental unit door on August 2, 2019. On August 7, 2019, the tenant filed an Application for Dispute Resolution to cancel the notice.

The landlord testified that there had been two incidents in which the tenant was verbally abusive to the building maintenance worker, accusing him of sexual harassment of two individuals. The landlord stated they investigated the tenant’s accusations and found them to be completely unfounded. The landlord testified that there had been another incident in which the tenant had knocked on another resident’s door and sent the resident verbally abusive text messages, and also spoke negatively about the resident to other residents in the building.

The landlord testified that due to the serious nature of the allegations made against the maintenance worker, she recommended that the worker report the two interactions with the tenant to the police. The tenant confirmed that police had contacted him but no charges were laid and there was no further follow-up required.

The tenant testified that he never raised his voice or used verbally abusive language to the maintenance worker and that the text message sent to the resident was “out of context”. The tenant testified that once he received the One Month Notice, he provided the maintenance worker and resident, as well as the landlord’s agent, with apology letters. The tenant testified that he has since avoided any contact with these parties.

The landlord confirmed that there has been no further incidents reported between the parties. However, the landlord stated that the situation at the building is “uncomfortable” for all the parties involved, and given the serious nature of the allegations, they wished to continue to seek an Order of Possession against the tenant.

I provided the parties with an opportunity to try and come to a settlement of their dispute, however, the parties were unable to do so. As such, I proceeded to address the dispute through arbitration.

### Analysis

Section 47(1)(d)(i) of the *Act* states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property.

Section 47(1)(e)(ii) states that a landlord may end a tenancy by giving notice to end the tenancy if the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that:

- 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

Section 47(4) 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 received the landlord's One Month Notice on August 2, 2019. The tenant filed an application to dispute the notice on August 7, 2019, which is within ten days of receipt of the notice. Therefore, I find that the tenant has applied to dispute the notice within the time limits provided by section 47 of the *Act*.

As set out in the Residential Tenancy Branch Rules of Procedure 6.6 and as I explained to the parties in the hearing, if the tenant files an application to dispute a notice to end tenancy, the landlord bears the burden, on a balance of probabilities, to prove the grounds for the notice and that the notice is on the approved form and compliant with section 52 of the *Act*.

After reviewing the One Month Notice submitted into evidence, I find that the notice meets the requirements for form and content as set out in section 52 of the *Act* as it is signed and dated by the landlord, provides the address of the rental unit, states the effective date of the notice, sets out the grounds for the tenancy to end, and is in the approved form.

Based on the testimony and evidence presented, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to prove the grounds for issuing the One Month Notice on the grounds of "illegal activity" as explained below:

- The term "illegal activity" includes a serious violation of federal, provincial or municipal law, whether or not it is an offence 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 this matter, there were no criminal charges laid against the tenant and the landlord failed to provide any evidence, as described above, regarding illegal activity committed by the tenant.

Based on the testimony and evidence presented, on a balance of probabilities, I find that the landlord has failed to provide sufficient evidence to prove the grounds for issuing the One Month Notice on the grounds of significant interference and unreasonable disturbance as explained below:

- There were only two incidents of the tenant verbally confronting the maintenance worker and only one incident of the tenant knocking on another resident's door and sending the same resident a verbally abusive text message.
- The tenant ceased any interactions with the above-noted parties upon issuance of the One Month Notice.
- Although the nature of the allegations made by the tenant were false and serious, the incidents were limited in number and duration. Therefore, I find the level of interference and disturbance does not meet the threshold of significant and unreasonable as required under the *Act*.

Therefore, as I do not find that the landlord has not proven the grounds for ending this tenancy, the tenant's application is successful and the landlord's One Month Notice is cancelled and of no force or effect.

As such, the tenancy will continue until ended in accordance with the *Act*.

Conclusion

The tenant was successful in his application to dispute the landlord's One Month Notice. I order that the One Month Notice to End Tenancy for Cause dated August 2, 2019 is cancelled and of no force or effect, and this tenancy shall continue until it is 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: October 03, 2019

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Residential Tenancy Branch