



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 2124315 ALBERTA LTD. & ASSOCIATED PROPERTY MANAGEMENT  
(2001) LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes           CNC

### Introduction

This hearing was convened as a result of the tenant's Application for Dispute Resolution (application) seeking remedy under the *Residential Tenancy Act* (the Act). The tenant applied to cancel a 1 Month Notice to End Tenancy for Cause dated September 3, 2019 (1 Month Notice).

The tenant, two legal advocates for the tenant (advocates), a witness for the tenant JR (tenant witness), an agent for the landlord DR (agent) and the building caretaker for the landlord KT (caretaker) attended the teleconference hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and make submissions to me.

The parties confirmed that they received evidence packages from each other and that they had the opportunity to review the evidence prior to the hearing. I find the parties were served in accordance with the Act.

### Preliminary and Procedural Matter

The parties confirmed their email addresses at the outset of the hearing and stated that they understood that the decision would be emailed to them.

### Issue to be Decided

- Should the 1 Month Notice be cancelled?

### Background and Evidence

A month to month verbal tenancy agreement began on May 1, 2014. Monthly rent in the amount of \$861.00 is currently due on the first day of each month.

The tenant confirmed receiving the 1 Month Notice on September 4, 2019 posted to their door with an effective vacancy date of October 31, 2019. The tenant disputed the 1 Month Notice on September 11, 2019, which is within the permitted 10-day timeline under section 47 of the *Act*. The landlord listed the following reasons on the Notice:

1. Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.
2. 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.
3. Tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk.

In support of the 1 Month Notice, the agent described two issues. The first issue is related to the allegation that the tenant runs hot water in the building to the point where there is not enough hot water for other tenants to use. The second issue is related to the allegation that the tenant has sprinkled a slippery white substance on the flooring of the hallway causing a slippery surface where someone could slip and fall.

Regarding the second issue, the agent stated that the caretaker advised her that while he was vacuuming the hallways, the caretaker witnessed the tenant shake a white carpet deodorizer on the hallway flooring, which caused a slippery surface that could have caused a slip and fall accident as the flooring is laminate flooring. The tenant disputed the agent's version of events and stated that he was eating a powdered donut and the powder from the donut accidentally spread onto the flooring when he dropped his donut by accident. The tenant also testified that that only deodorizer he as sprayed in the hallways is an aerosol and not a powder.

The caretaker was called as a witness and the caretaker testified that he personally witnessed the tenant shaking a can and white carpet deodorizer was spraying on the floor. The caretaker was asked if the white powdery substance could have been from a powdered donut and the caretaker said no. The caretaker stated that the size of the white powdery substance was 30 feet by 5 feet. On cross-examination the caretaker confirmed that he used a vacuum with a beater bar on it on the hard surface laminate flooring and denied that the beater bar would cause debris to spray away from the vacuum. The caretaker also confirmed that he resides with DH, who was one of the complainants against the tenant. The caretaker also confirmed that he does not have a good relationship with the tenant. When asked by the landlord agent if there was a reason for not having a good relationship with the tenant, the caretaker said "no."

Regarding the hot water issue, the agent stated there are 16 units in the rental building and referred to several emails submitted in evidence from other tenants complaining about the lack of hot water in the rental building. The first email dated July 18, 2019 from tenant TG (aka TM) complains about someone running water for hours at a time and leaving others with no hot water. In the email string provided, TG/TM names the rental unit where the tenant resides but

does not name the tenant specifically. The second letter is from KA of a lower unit and KA is not sure if it is the tenant or the tank having a problem, but that the lack of hot water is annoying.

The agent referred to two warning letters to the tenant dated June 21, 2019 and July 19, 2019. While the tenant confirmed receiving both warning letters, the advocates confirmed that neither response to the letters were submitted in evidence. The tenant witness was called and testified that they have lived at the tenant's rental unit for a few months starting May 2019 and even currently, the tenant witness spends on average 10 to 20 days per month overnight at the rental unit. The tenant witness confirmed that they have been without hot water at times including sometimes in the summer.

The advocates stated that the email complaints were subjective and that other tenants were making assumptions that the tenant was the cause of the lack of hot water, instead of the hot water tank being too small to meet the demand of the rental building. The caretaker confirmed that since the 1 Month Notice was issued, there has been no lack of hot water in the building. The advocates presented some photos including one showing an open door at the top of the stairs, which can allow debris from the outside to enter the hallways and another interior hallway door propped open.

In addition, the tenant submitted a document signed by six tenants in the building other than the tenant's witness, which indicates that they agree that they "have to run the Hot water before it gets Hot. Sometimes it's only warm".

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on the balance of probabilities, I find the following.

When a tenant disputes a 1 Month Notice, the onus of proof reverts to the landlord to prove that the 1 Month Notice is valid and should be upheld. If the landlord fails to prove the 1 Month Notice is valid, the 1 Month Notice will be cancelled.

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.

While both parties have provided reasons as to why the 1 Month Notice is issued, I find the response by the tenant to be equally believable and note that caretaker expressed that he does not have a good relationship with tenant and could not explain why, which I find reduces the weight of the caretaker's testimony. Furthermore, I find the landlord failed to provide any supporting evidence that the hot water tank in the building is sufficient in size and working condition to supply a 16-unit building. Regarding the white powdery substance, I note that the landlord failed to bring any photographic evidence to my attention to support the white powdery substance was 30 feet by 5 feet as claimed by the caretaker.

Therefore, based on the above, I find the landlord has provided insufficient evidence to support the 1 Month Notice is valid and as a result, **I cancel** the 1 Month Notice dated September 3, 2019. The 1 Month Notice is of no force or effect.

**I ORDER** the tenancy to continue until ended in accordance with the Act.

### Conclusion

The tenant's application is successful. The 1 Month Notice is cancelled.

The tenancy shall continue until ended in accordance with the Act.

This decision will be emailed to both parties as indicated above.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 27, 2019