



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding GATEWAY PROPERTY MANAGEMENT CORPORATION  
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 the cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

The tenant attended the hearing and was represented by an advocate ("**LH**"). The landlord was represented by its property manager ("**RM**"), its building manager ("**DC**"), and its caretaker ("**TC**"). Both were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

### Preliminary Issue – Service of Evidence

LH stated that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package shortly after making this application. LH stated that the tenant sent further evidence on the landlord by registered mail on December 6, 2019 (four days before the hearing). RN testified that the landlord received this further evidence on December 9, 2019 (the day before the hearing). LH sought leave to allow the late-served evidence to be relied upon at this hearing. RN consented, stating that she had sufficient time to review the new evidence.

As such, I permit the new evidence to be relied upon at the hearing and find that the tenant served the landlord with all required documents in accordance with the Act.

RN testified, and LH confirmed, that the landlord served the tenant with its evidence package. I find that the landlord's service is in accordance with the Act.

### Preliminary Issue – Admissibility of Recordings

The tenant submitted three audio recordings (the "**Recordings**") she made of conversations between herself and agents of the landlord. RM testified that the Recordings were made without

the consent of the agents being recorded. She argued that this was improper and that the recordings should be excluded from evidence on this basis.

LH argued that that “one party consent” was all that is required to legally record a conversation. He argued that as long as one party to a conversation is aware that it is being recorded, it is not improper for the tenant to have recorded her conversations.

Neither party provided any statutory authority to support their positions. However, I note that section 183 of the Criminal Code of Canada makes it illegal to “record someone else’s conversation in which you are not the intended recipient”. The Criminal Code does not include a similar prohibition against recording a person’s own conversations without advising the other participants.

I am not aware of any statutory or judicial authority which stands for the proposition that a conversation recorded without the consent of all the participants is not admissible as evidence in a legal proceeding.

As it is the landlord’s application to exclude the Recordings, the landlord bears the burden of proving that the making or inclusion of the recordings is improper. I find that it has failed to do so. As such, the Recordings may be admitted into evidence.

### **Issue(s) to be Decided**

Is the tenant entitled to an order cancelling the Notice?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties’ claims and my findings are set out below.

The parties entered into a written tenancy agreement starting April 15, 2005. Monthly rent is currently \$1,030 and is payable on the first of each month. The tenant paid the landlord a security deposit of \$432.50. The landlord still retains this deposit.

RM testified that the landlord sent the tenant the Notice on September 18, 2019 by registered mail. The tenant confirmed receipt and filed this application on September 26, 2019.

The Notice indicates an effective move-out date of October 31, 2019. The tenant has not moved out of the rental unit.

The grounds to end the tenancy cited in that Notice were:

- 1) the tenant or a person permitted on the property by the tenant has

- significantly interfered with or unreasonably disturbed another occupant or the landlord;
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

The Notice provided additional details of the causes leading to its issuance:

Notice given due to complaints received, tenant being rude and hostile to building staff, tenant continued to do work in common area even after was told to stop.

RM testified that the tenant made unauthorized repairs and cleaning to the common areas of the rental property and harassed the building's caretakers, technicians the landlord hired to make repairs of the rental property, and other tenants of the rental property.

The landlord submitted into evidence seven letters (the "**Letters**") it sent to the tenant RM testified relate to these issues, dated as follows:

- April 18, 2017
- June 29, 2017
- July 24, 2017
- August 15, 2019
- September 3, 2019
- November 18, 2019

During the course of RM's testimony, it became clear that the June 29, 2017 and November 18, 2019 letters did not relate to any issue upon which the landlord gave as a reason to end the tenancy on the Notice.

RN was not able to articulate what repairs the tenant made to the common areas of the rental property. Rather, she testified that the tenant cleaned the common areas, including the rental unit elevator, and that while doing so she does not allow other tenants of the rental property to use the elevator, and on more than one occasion yelled at other tenants who tried to use the elevator.

The landlord also entered into evidence a written statement by TC dated September 1, 2019, wherein TC alleged that, on September 1, 2019, the tenant argued and was rude to her during a conversation relating to the proper form of receipts for cash rental payments and the proper cleaning of the building. This statement also included a general allegation that the tenant is "consistently aggressive" towards her. She also wrote that she reported the tenant's conduct to the RCMP.

No RCMP file was submitted into evidence.

The landlord entered another written statement by TC, dated October 1, 2019, wherein TC alleged that the tenant "violently took a pen from [TC's] hand" on one occasion.

The landlord entered two written statement from another tenant of the rental property, whose names have been redacted. In the first, dated November 20, 2019, the author wrote that the tenant told her that she wanted to get the caretaker and the building manager fired. The author then wrote that the tenant “aggressively screamed at me very loudly saying get out and pushed me out (of the elevator).” The author wrote that she then reported the tenant to the RCMP.

No RCMP file was submitted into evidence.

In the second anonymous statement, which is undated, the author writes:

I have also observed that [the tenant] is relentlessly following [the caretaker] around the building both outside and inside (especially when [the caretaker] is vacuuming) as a shadow that is full of negativity and constant complaints! Frequently, physically grabbing [the caretaker's] arm and hands - so that she cannot get away and is forced to hear unpredictable what [the tenant] has must to say!!

TC testified that the tenant has grabbed her arm on at least one occasion.

#### Tenant's Position

LH denied that the tenant ever yelled at the caretaker, another agent of the landlord, or another tenant, acted inappropriately towards the caretaker, another agent of the landlord, or another tenant. He denied that the tenant ever grabbed the caretaker's arm or hands.

LH admitted that the tenant did clean the elevator in the rental unit but had only good intentions in so doing. Additionally, he testified that when she was asked to halt this behaviour, she did.

LH denied that the tenant ever prevented another tenant from using the elevator when she was cleaning it. He denied that she ever made any repairs to the common areas of the rental property.

In the first Recording, made July 31, 2019, the tenant and TC can be heard to working together to fix an issue with the common property (the exact nature of which is unclear to me). The tenant makes suggestions on how TC can better make herself available for contact by the other tenants. The two can be heard laughing and making small talk.

LH stated that while this Recordings is not of an incident referred to by the landlord as a basis for ending the tenancy, it is typical of interactions between the tenant and the landlord's agents.

In the second Recording, made September 1, 2019, the tenant and TC are discussing rent payment arrangements. It appears that this conversation is the one described in TC's written statement dated September 1, 2019. The tenant is not heard to be yelling at TC, although at

times in the conversation she interrupts TC and does not let TC finish responding to the tenant statements. Additionally, in this recording the tenant seems to be lecturing TC as to how to do her job, and repeatedly stating that TC needed the tenant's help when TC started as caretaker. TC can be heard denying this on the recording. The tenant then repeatedly demands to know who is going to be making a number of repairs to the common areas of the rental unit.

The third Recording, made September 16, 2019, is a conversation between the tenant and a tradesperson hired by the landlord. The tenant is not heard to be yelling or acting in any way inappropriately.

LH also argued that I should assign no probative weight to the anonymous witness statements. He argued that by keeping the statements anonymous the tenant was deprived of an opportunity to specifically rebut the allegations, to provide context to the interactions, and to cross examine the witnesses.

LH also noted that although some of the Letters referred to complaints from other tenants, the landlord did not provide copies of these complaints in the evidence. He questioned whether such complaints actually existed.

LH argued that the evidence supporting the allegations set out in the Notice is from the landlord's agents. He argued that there is no reliable third-party corroboration of any the allegations, and such corroboration should have been readily available to the landlords (in the form of witness statements from named tenants, copies of the tenant complaints referred to in the Letters, and police reports referred to in TC's and the anonymous witnesses' statement).

## **Analysis**

Rule of Procedure 6.6 states:

### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

In this case, I find that the landlord bears the onus to prove that the tenant acted as alleged on the Notice.

Based on my review of the documentary evidence, and the parties' testimony, I find that the landlord has failed to meet this burden. I agree with LH that the Notice lacks the support of reliable third-party evidence. Such evidence should have been relatively simple to provide. Copies of police reports are available by way of freedom of information requests. Statements from other tenants or contractors could be obtained. Copies of complaint letter received could have been entered into evidence.

None of these things were provided. As such, I draw an adverse inference against the landlord. Put simply, I infer from the landlord's failure to produce these documents that the document either do not exist, or do not contain information that would corroborate their allegations.

Additionally, I assign minimal probative weight to the anonymous statements. By redacting the names of the statements' makers, I find that the landlord deprived the tenant of her ability to fully rebut the allegations contained therein.

I do not find the first and third Recordings of any assistance to the tenant. They have been tendered as evidence of how the tenant typically interacts with the landlord's agents. I do not find them to be persuasive evidence of this. I find that, as the tenant was aware that the recordings were being made, she was incentivized to act in a non-offense manner. However, this does not imply that in other instances she acted in an offensive manner towards the landlord's agents.

I find that the second Recording, made September 1, 2019, captures the conversations between the tenant and TC as described in TC's written statement of the same date. I find agree with TC's assessment that the tenant was rude to her in this conversation. However, I do not find that the tenant acted aggressively towards TC. The tenant's conduct might better be described as mildly condescending or dismissive. I do not find that such conduct satisfies a basis for the tenancy to be ended as set out on the Notice, although I do acknowledge that TC likely found this interaction to be off-putting. This is not enough, however, to warrant an eviction.

The direct evidence left to be weighed is that of the tenant and that of TC. Their evidence is in direct conflict. I cannot say if the tenant acted aggressively towards TC on other occasions, or if she grabbed TC's arms or hands. I am not able to determine which of the two is telling the truth. As such, I find that the landlord has failed to discharge their evidentiary burden to prove that the tenant acted as alleged on the Notice.

## **Conclusion**

For the forgoing reasons, pursuant to section 47 of the Act, I grant the tenant's application, and cancel the Notice. The tenancy shall continue.

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: December 11, 2019

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Residential Tenancy Branch