



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC

### Introduction

On December 10, 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”) and seeking an Order for the Landlord to comply pursuant to Section 62 of the *Act*.

The Tenant attended the hearing with I.C. attending as an advocate for her. The Landlord attended the hearing as well. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package by hand on December 13, 2019 and the Landlord confirmed 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 package.

She also advised that she served her evidence, including one 48 second video, to the Landlord by hand on January 25, 2020. The Landlord confirmed that he received this evidence, that he had reviewed it, and that he was prepared to respond to it. As the Landlord was prepared to respond to the Tenant’s evidence despite it not being served in compliance with the timeframe requirements of Rule 3.14 of the Rules of Procedure, I have accepted only this evidence and will consider it when rendering this decision.

The Landlord advised that he served his evidence to the Tenant by hand on January 28, 2020 and the Tenant confirmed that she received this evidence. As this evidence was served in compliance 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.

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 Tenant's Application with respect to the Notice, and the other claim regarding the Order to comply in relation to the dispute over the utilities was dismissed with leave to reapply. The Tenant is at liberty to apply for any other claims under a new and separate Application.

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.

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, is the Landlord entitled to an Order of Possession?

#### 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.

All parties agreed that the tenancy started on October 1, 2016 and rent is currently established at \$1,066.00 per month, due on the first day of each month. A security deposit of \$487.50 was also paid. A copy of the signed tenancy agreement was submitted as documentary evidence.

The Landlord advised that the Notice was served to the Tenant by hand on December 5, 2019 and the Tenant confirmed that she received this Notice. The reasons the

Landlord 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 January 31, 2019.

He advised that the Tenant has lived in the rental unit since 2015 and that the other tenant moved into the basement in September 2019. He stated that since the start of the downstairs tenancy, there has been increasingly escalating conflict between the tenants. He received an email from the downstairs tenant on November 24, 2019 outlining her concerns with respect to interactions and disagreements she has experienced with the Tenant, one of which included a breach of the tenancy agreement regarding smoking on the property. As a result of this email, he stated that he attempted to organize a meeting with the Tenant on December 3, 2019 to discuss these issues, to introduce what he termed a Good Neighbour Practice, and to encourage more acceptable shared living practices.

He stated that after this meeting, the downstairs tenant complained that the Tenant used profanity and foul language when interacting with her. Furthermore, after being served the Notice, the Tenant posted negative comments and pictures on her social media accounts of the interaction and of the Landlord. He submitted that the Tenant intentionally parks her vehicle in the driveway in such a way that engine exhaust fills the basement suite when idling. He advised that the tipping point and the reason the Notice was served is because after he tried to bring peace to the living situation and meet with the Tenant to discuss how to live more amenably, the Tenant inappropriately and profanely interacted with the downstairs tenant. He stated that he has received over 70 complaints from the downstairs tenant, and he submitted documentary evidence and witness statements to corroborate that the Tenant has engaged in activity that 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. He mentioned that the Tenant had helped him find the downstairs tenant to rent the basement.

The Tenant confirmed that the downstairs tenant had parked in the driveway when she moved in but there was no altercation. She stated that she was never given notice by the Landlord of when the tenant would be moving in. As well, she stated that she was never informed of any complaints from the downstairs tenant. She refuted that she used profanity in an exchange with the tenant after meeting with the Landlord on December 3, 2019 as she was simply having a conversation with her sister.

She stated that she has lived there for four years and did not have any issues with the previous tenant. She confirmed that she helped the Landlord find the tenant and that they had an amicable relationship to start. She stated that the relationship between them started to change when the tenant would bizarrely watch the Tenant's activities, and she advised that the tenant would take videos of her and would excessively text her to the point that she has now been blocked. She stated that the tenant would interact in a derogatory manner and that she feels constantly harassed.

The Tenant referred to the video that she submitted which demonstrated that the downstairs tenant was drunk and yelling. She speculated that the tenant set off the alarm twice and as a result, the police were called. When she called the Landlord to report this incident, she stated that the Landlord would not believe her as the downstairs tenant was not apparently home. She stated that as a result of the negative interactions with the tenant, she only sleeps there approximately half of the time. She advised that the Landlord has not investigated this situation at all but simply takes the tenant's portrayal of the interactions as the truth. She acknowledged that she posted inflammatory comments on her social media accounts; however, she stated that this was done in the heat of the moment and she did not post anyone's identities.

### 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 Landlord's Notice to ensure that the Landlord has 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 55 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,*

Regarding the validity of the reasons indicated on the Notice, the onus is on the party issuing the Notice to substantiate the reasons for service of the Notice. With respect to the reasons on the Notice, both parties contend that there have been verbal altercations between the Tenant and the downstairs tenant, which I find to be consistent. However, the details of the Landlord's account are contradictory to the Tenant's. As the onus is on the Landlord to prove that the Tenant acted in a manner to warrant service of the Notice, I find it important to note that there is no evidence that he investigated the complaints of the downstairs tenant to determine if there was any legitimacy to those allegations. It is clear to me that the Tenant and the downstairs tenant are dissatisfied with each other and it is not beyond the realm of possibilities that they have both engaged in heated, unpleasant discussions. While the Landlord made attempts to "smooth things over" with the tenants by discussing a Good Neighbour Practice with the Tenant, there is no evidence that he did the same with the downstairs tenant.

Upon viewing the video submitted by the Tenant, it appears to depict a seemingly intoxicated female's voice, which I infer belongs to the downstairs tenant, who is yelling somewhat confusingly through the wall at the Tenant. While I am satisfied from the Landlord's evidence that the Tenant may have engaged in some conduct detrimental to her tenancy, I find that this video is the most compelling evidence as this demonstrates, in my view, that the downstairs tenant is more likely than not also a contributing and aggravating factor to the dysfunctional relationship between the parties. As the Landlord has provided little persuasive evidence that the Tenant is the instigator or aggressor and entirely at fault for the conflict between her and the downstairs tenant, and as I am somewhat doubtful, from the video, of the legitimacy of the downstairs tenant's allegations, I am satisfied that the parties have been mutually antagonistic towards each other. Consequently, I do not find that the Landlord has submitted sufficient evidence to substantiate service of the Notice upon the Tenant.

Ultimately, I am not satisfied that the Landlord has sufficiently substantiated the grounds for ending the tenancy under the reasons that 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.” As such, I am not satisfied of the validity of the Notice and I find that the Notice is cancelled and of no force and effect.

However, as an aside, I am satisfied that the Tenant more likely than not has engaged in heated and inappropriate interactions with the downstairs tenant and she did unwisely post about these situations on her social media accounts. While I am not entirely convinced that the Tenant is solely to blame for the dysfunction within this property, I strongly caution the Tenant that she is on formal notice that any continued, escalated behaviours or actions that are unacceptable or inappropriate may jeopardize her tenancy.

### Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of December 5, 2019 to be cancelled and of no force or effect.

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: February 11, 2020

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Residential Tenancy Branch