



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding HBAC HOLDINGS INC.  
and [tenant name suppressed to protect  
privacy]

## **DECISION**

Dispute Codes      CNC

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on January 14, 2020 (the "Application"). The Tenant applied to dispute a One Month Notice to End Tenancy for Cause dated December 30, 2019 (the "Notice").

The Support Worker for the Tenant appeared at the hearing. The Tenant did not appear. The Agent for the Landlord appeared at the hearing.

The Agent for the Landlord confirmed the correct name of the Landlord which is reflected in the style of cause.

I explained the hearing process to the parties who did not have questions when asked. The parties provided affirmed testimony.

The Tenant submitted a copy of the Notice. The Landlord did not submit evidence for the hearing. I addressed service of the hearing package.

The Agent testified that the Landlord only received the hearing package January 31, 2020. The Agent raised an issue with this. The Agent confirmed the Landlord had enough time to review the hearing package and prepare for the hearing.

I acknowledged that, pursuant to section 59(3) of the *Residential Tenancy Act* (the "Act") and rule 3.1 of the Rules of Procedure (the "Rules"), the Tenant should have served the hearing package within three days of it being made available. An arbitrator can extend this timeline pursuant to section 66 of the *Act*. The hearing package was made available to the Tenant January 14, 2020.

The purpose of service of the hearing package is to provide the respondent with notice that an application is being made and to provide details about the application and hearing. Service allows the respondent to collect the evidence they require for the hearing, to submit that evidence, to serve that evidence and to prepare for the hearing.

Here, the only evidence submitted by the Tenant is the Notice. The Notice was issued by the Landlord and therefore the Landlord should be familiar with this document. The Landlord received the hearing package January 31, 2020, 40 days before the hearing. The Tenant has raised one issue in the Application. The one issue involves the Notice which was issued by the Landlord. The issue raised in the Application is straightforward. The Landlord had 40 days to review the hearing package and prepare for the hearing. This was more than enough time to have done both. The Agent appeared at the hearing and confirmed that the Landlord did have enough time to review the hearing package and prepare for the hearing. The Landlord has not suffered any prejudice due to the Tenant serving the hearing package by January 31, 2020. In the circumstances, I was not satisfied there was an issue with the date of service of the hearing package. I proceeded with the hearing.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the Notice and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

I note that the Support Worker made scoffing noises a number of times while the Agent was speaking such that I had to ask the Support Worker about this. When asked about this, the Support Worker voluntarily put herself on mute when she was not speaking.

#### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?

#### Background and Evidence

The parties agreed on the following. There is a written tenancy agreement between the parties in relation to the rental unit. The tenancy started November 05, 2019. Rent is \$800.00 per month due on the first day of each month.

The Notice was submitted as evidence. The grounds for the Notice are:

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.
2. The 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" on the Notice outline two police incidents.

The Agent testified that the Notice was served on the Tenant in person December 30, 2019.

The Support Worker testified that the Tenant said the Notice was taped to the door of the rental unit and he did not receive it until January 01, 2020.

The Agent testified as follows in relation to the grounds for the Notice. She has the police file numbers for incidents involving the Tenant. Other tenants are concerned for their safety and right to quiet enjoyment due to these incidents. She spoke to the Tenant about these incidents. Things with the Tenant had started to escalate with different people attending the building. Police have been attending.

The Agent testified as follows in relation to the first police incident. On December 26, 2019, other tenants heard two females in the rental unit screaming. The other tenants thought the females were being assaulted and called police.

The Agent testified as follows in relation to the second police incident. The second incident involved a medical issue. She was told by another tenant that the Tenant overdosed. Another tenant called the police and ambulance. The Tenant was taken away.

The Agent testified that she received verbal information and an email from other tenants about the incidents noted above; however, the other tenants did not want to submit anything because they are concerned. She testified that much of what the other tenants said was simply their opinion.

The Support Worker testified as follows. The Landlord does not have grounds for the Notice. It was the medical emergency that occurred on December 26, 2019. The ambulance was called by a resident who heard the Tenant yelling and found the Tenant

incoherent. On December 29, 2019, the police were called because of people outside the building screaming. The people screaming were not involved with the Tenant. Other tenants just assumed the disturbance outside related to the Tenant.

In reply, the Agent acknowledged she got the dates of the incidents mixed up. The Agent testified that the police confirmed both files related to the Tenant.

### Analysis

The Landlord was permitted to serve the Notice based on the grounds in the Notice pursuant to sections 47(1)(d)(i) and 47(1)(e)(ii) of the *Act*.

The Tenant had 10 days from receiving the Notice to dispute it under section 47(4) of the *Act*. The Application was filed January 07, 2020, within time whether the Tenant received the Notice December 30, 2019 or January 01, 2020.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules.

When 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.

Sections 47(1)(d)(i) and 47(1)(e)(ii) of the *Act* state:

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...

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that...

- (ii) 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...

The Notice states that it is based on two police incidents which have caused other tenants concern for their safety and right to quiet enjoyment. The Agent provided further details about these incidents at the hearing.

The Support Worker took the position that one incident was a medical emergency. The Support Worker denied that the second incident involved the Tenant.

The Landlord has not submitted any documentary evidence to support the grounds for the Notice. The Agent did not call any witnesses at the hearing to support the grounds for the Notice. Police file numbers do not assist as they say nothing about what happened and I cannot look into them further. I acknowledge that the Agent testified that other tenants did not want to submit evidence; however, in the absence of evidence from the other tenants, I cannot be satisfied that there are other tenants in the building that are concerned for their safety or right to quiet enjoyment. In this type of hearing, the expectation is that the Landlord call the other tenants as witnesses, provide documentary evidence of complaints from other tenants or provide signed witness statements from other tenants.

In the absence of further evidence, I am not satisfied the December 26, 2019 incident was anything more than a medical emergency. This is not grounds to end the tenancy under section 47 of the *Act*.

In the absence of further evidence, I am not satisfied the December 29, 2019 incident involved the Tenant.

Given the lack of evidence about the December 26 and 29, 2019 incidents and the lack of evidence from other tenants, I am not satisfied the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord or engaged in illegal activity. The Landlord has failed to prove the grounds for the Notice. The Notice is therefore cancelled. The tenancy will continue until ended in accordance with the *Act*.

Conclusion

The Application is granted. The Notice is cancelled. The tenancy will 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 *Act*.

Dated: March 12, 2020

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Residential Tenancy Branch