



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CLC SENIORS HOUSING SOCIETY 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 the One Month Notice to End Tenancy pursuant to section 47 of the *Act*.

The landlord's Building Manager SS, Weekend Manager JM, and the Chair of the Board RLJ attended on behalf of the landlord. The tenant and his advocate JT attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

The Advocate submitted that they served the landlord with the application for dispute resolution on January 16, 2020. The Chair of the Board confirmed receipt of the tenant's application for dispute resolution and evidentiary materials on the same day.

The Weekend Manager testified that the One Month Notice to End Tenancy ("One Month Notice") was served personally on the tenant on January 6, 2020 effective date February 29, 2020. I find that the both parties were served in accordance with section 89 and 90 of the *Act*.

Section 55 of the *Act* requires that when a tenant submits an application for dispute resolution (the "application") 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 or the landlord's notice to end tenancy is upheld and the landlord has issued a notice to end tenancy that is compliant with the *Act*.

### Issues to be Decided

Is the tenant entitled to cancellation of the One Month Notice pursuant to section 47 of the *Act*?

If the tenant fails in this application, is the landlord entitled to an Order of Possession pursuant to section 55 of the *Act*?

### Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenant's and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on September 1, 2017 and is currently ongoing. Monthly rent in the amount of \$320.00 is payable on the first day of each month.

The landlord issued the One Month Notice on January 6, 2020. The Advocate submitted that the Notice was served in person on the tenant with a third-party witness. The One Month Notice had a stated move-out date of February 29, 2020.

RLJ testified that the tenant breached a material term of the tenancy agreement. The tenancy agreement stated that smoking of any substances was prohibited inside and outside the rental property.

RLJ testified on December 22, 2019 the tenant was ill and in severe pain. The tenant informed Weekend Manager JM that he was going into hospital, and that "he may never come back" The tenant informed JM, that he could not locate his keys to lock the rental unit.

RLJ testified that they wished to secure the tenant's apartment, therefore, with his two colleagues SS and JM they went to the apartment and found it unlocked. All three entered the apartment and found three strips of foil with white powder on the table. Their assumption was that the tenant was dealing with substance abuse and illegal drugs.

The weekend Manager JM testified that the tenant regularly invited homeless people to his rental unit, they believed the tenant was assisting the homeless to wash their

laundry which was subsidized at \$1.00 for each wash. He testified that the tenant always had a 'steady stream of homeless people visiting him'.

The Advocate argued that the tenant was in "excruciating pain" and that the tenant had requested them to lock the apartment door. She argued RLJ and his colleagues had entered the apartment illegally and that there was no requirement for them to enter the apartment.

The Advocate argued that the tenant was being judged and that the landlord and his employees were attempting to find clothing that did not belong to him and suggesting that the four/five loads of weekly washing did not belong to him.

The tenant testified that his friends were not homeless, and he owned "a lot of clothes" and the laundry he washed, personally belonged to him.

The Advocate argued that whilst the tenant was hospitalized, the landlord illegally changed the locks to the rental apartment.

Building Manager SS testified and confirmed that the locks had been changed and a new key had been cut for the tenant due to the well being and safety of other tenants in the building. She testified that the tenant was not given a key to the front door.

Building Manager SS testified that they had written to the tenant on February 20, 2020 in which the tenant was told to rectify the situation but failed to do so.

### Analysis

Section 47 of the Act provided 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. If the tenant files an application to dispute the notice, the landlord bears the burden to prove the grounds for the Notice. I find that the tenant disputed the Notice within the ten days.

"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, the landlord must demonstrate why they feel the One Month Notice is valid.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified on the Notice. Here, the landlord must demonstrate that the tenant has done any or all of the following:

- Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant;
- Put the landlord's property at significant risk;
- Breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

I find that the landlord has failed to provide sufficient evidence to support the grounds selected in the One Month Notice. The landlord did not provide any photographs, or any documentary evidence that the smoking and washing clothes were serious enough to jeopardize the health or safety of the property and other occupants.

There is no evidence whatsoever that the smoking and washing laundry of the tenant is serious enough to be a threat to the tenancy. The testimony was not detailed enough to suppress the lack of documentary evidence.

Furthermore, the fact that the tenant was hospitalized, the landlord's actions amount to illegal entry of the rental unit pursuant to section 31 of the *Act*.

For these reasons, I find that the landlord has failed to provide sufficient evidence to prove on the balance of probabilities any of the grounds set forth in the notice to end tenancy. Accordingly, I grant the tenant's application to cancel the One Month Notice.

The One Month Notice is cancelled and is of no force or effect.

### Conclusion

I grant the tenant's application to cancel the One Month Notice. The One Month Notice is cancelled and is of no force or effect and the tenancy continues 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 *Residential Tenancy Act*.

Dated: March 27, 2020

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Residential Tenancy Branch