



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

On March 24, 2020, 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”).

The Tenant attended the hearing and the Landlord attended the hearing as well, with N.T. attending as her witness. All in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord with the Notice of Hearing package by hand on or around March 25, 2020 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.

Both parties confirmed that they did not submit any evidence for consideration on this file.

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 March 15, 2020 according to the tenancy agreement; however, the Tenant was allowed to move in on March 13, 2020. Rent is currently established at \$950.00 per month and is due on the first day of each month. A security deposit of \$500.00 was also paid according to the tenancy agreement; however, \$25.00 was returned to the Tenant later.

The Landlord advised that the Notice was served to the Tenant by hand on March 18, 2020 and the Tenant confirmed that she received this Notice. The reason the Landlord served the Notice is 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.” The Notice indicated that the effective end date of the tenancy was April 30, 2020.

The Landlord advised that ever since the Tenant moved in, she has been making a lot of noise late at night. She would slam doors and cabinets, do her dishes loudly and in the early hours of the morning, and she would talk on the phone at early hours of the morning as well. The Landlord said she talked to the Tenant about this behaviour because she would keep her family awake and they all had to work. She stated that when she would vacuum, the Tenant would bang on the ceiling. On March 17, 2020, the Tenant banged on the Landlord’s door, yelled at her, and pointed in her face aggressively. The Landlord called the police, who told her that this was a residential tenancy matter and that she should only communicate with the Tenant by text. N.T. testified and she echoed the same sentiments about the nature of the Tenant’s behaviour. She stated that her and her brother sleep at their grandmother’s place and she advised that they are all scared of the Tenant.

The Tenant advised that the Landlord texted her on March 15, 2020 because she felt that the Tenant had slept in until 9:30 AM as she was not working. Two days later, the Landlord then banged on her door aggressively and told her to move. She called the police and showed them the text from the Landlord. She attempted to get a mutual agreement to end the tenancy with the Landlord, but the Landlord gave her the Notice instead. She stated that she does not slam the doors or make any noise.

### 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.

Neither party submitted a copy of the Notice for consideration. As I was unable to view the relevant Notice to determine if it complied with Section 52 of the *Act*, in accordance with Rule 3.19 of the Rules of Procedure, I provided direction on requesting late evidence. A copy of the Notice, that is the subject of this dispute, was requested to be provided from the Landlord as it was essential to the matter at hand. A copy of this Notice was provided by the Landlord after the hearing. The pertinent details and information on the Notice were reviewed during the hearing and all parties agreed to the accuracy of the content contained within.

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 52 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,*

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As such, the onus is on the party issuing the Notice to substantiate the validity of the reason for service of the Notice.

With respect to the reason on the Notice, both parties contend that there have been altercations between them, 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 while the Landlord may have discussed her issues with the Tenant's alleged behaviour, other than the testimony of N.H., the Landlord has provided insufficient testimony to support the significance of the noise issues that the Tenant is making. Furthermore, there is no evidence that the police found any indication of aggressive behaviour and they did not seek to proceed with any further action.

While it is clear to me that the Tenant and the Landlord are dissatisfied with each other and that it is not beyond the realm of possibilities that they have both engaged in heated, unpleasant discussions, I find that the Landlord has provided little persuasive evidence that the purported actions of the Tenant would constitute a significant interference or an unreasonable disturbance of the Landlord. 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 ground 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." 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.

### Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of March 18, 2020 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: April 20, 2020

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Residential Tenancy Branch