



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, FFT**

### Introduction

This hearing was reconvened after the issuance of an interim decision dated May 11, 2020. The previous hearing was adjourned so that the parties could exchange evidence.

This hearing was scheduled to deal with the tenant's application pursuant to the *Residential Tenancy Act* ("Act") for an order to cancel a one month notice to end tenancy for cause pursuant to sections 47 and 55 and to recover the filing fee pursuant to section 72.

The landlord attended the hearing and was assisted by a certified interpreter. The tenants attended the hearing and were represented by the co-tenant, TT ("tenant"). The tenant testified that she received a USB stick containing video evidence, but not the documentary and photographic evidence that was provided to the Residential Tenancy Branch. The landlord testified that she provided a USB stick to the Residential Tenancy Branch through a dropbox on Thursday, May 14<sup>th</sup>. I did not have any video evidence from the landlord before me for this hearing. In any event, neither the landlord nor the tenant specifically referred to any of the documentary evidence they provided in advance of the hearing.

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

Further, I advised the parties that I would be determining whether the landlord had reasonable grounds to end the tenancy at the time the One Month Notice To End Tenancy for Cause was drafted and served on February 25, 2020 and March 7, 2020 respectively. Events that took place after the issuance and serving of the Notice would not be considered in my determination of whether the grounds to end the tenancy were sufficiently proven.

### Preliminary Matters

Section 63 of the *Act* allows an Arbitrator to assist the parties settle their dispute and record the settlement in the form of a decision and order if the parties settle their dispute during the dispute resolution proceeding. Accordingly, I attempted to assist the parties to resolve this dispute by helping them negotiate terms of a settlement. The parties could not reach consensus on the terms of a settlement; therefore, I heard testimony, considered the evidence, and issued a decision to resolve this dispute.

### Issue(s) to be Decided

Are there reasonable grounds to end the tenancy for the reasons provided on the One Month Notice To End Tenancy for Cause?

Can the tenant recover the filing fee?

### Background and Evidence

A copy of the tenancy agreement was provided as evidence. This fixed one-year tenancy began on November 1, 2019 with rent set at \$1,000.00 per month. The parties describe the rental unit as a basement suite located in a detached house.

The landlord testified she served the tenant with a One Month Notice To End Tenancy for Cause ("Notice") on March 7, 2020 by posting it to the tenant's door. The tenant acknowledges receiving it later that night. The Notice is dated and signed February 25, 2020 and provides an effective (move-out) date of April 30, 2020. The reason for ending the tenancy states:

- i. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- ii. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

No 'details of cause' were provided on the Notice.

The landlord testified a letter was attached to the Notice, which the tenant denies. The landlord was unable to advise me the contents of the letter, and testified she provided it

to the Residential Tenancy Branch and assumed that evidence would be forwarded to the tenant by the Branch.

Regarding the reasons for ending the tenancy, the landlord provided the following testimony:

- i. the female tenant often yells. She loses her temper easily and swears a lot. She bangs and slams doors and goes to the garage area to smoke cannabis and the neighbours smell it. She has had complaints from the neighbours. The female tenant argues with both the co-tenant and her young child. If the landlord says anything to the tenant, the tenant exacts revenge against her by making a 'huge noise'. It's impossible to communicate with the tenant.
- ii. There is no way she can sleep. There is a room below her bedroom and every day, she smells burning. The tenant makes noises in that room, causing the landlord to lose sleep. The landlord has called the fire department and police to the tenant's unit, however they couldn't find anything because the tenant removed the 'stuff' that caused her to call the authorities.

The tenant provided the following testimony. The tenant acknowledges that she is a loud person, but she doesn't yell. The uninsulated walls in the house provide no sound barrier between the upstairs and downstairs units. Its only a single sheet of drywall between them. She is not required to watch her language in the property she rents. There is no evidence of burning, however the fire department advised her that the smell could possibly be caused by an overloaded electrical circuit board being used by two households while it is only capable of handling one. The landlord countered that the tenant uses too much electricity.

Regarding the area below the landlord's bedroom: the tenant does not have cupboards and so that room is used to store food. The sound the landlord hears is the tenant going into that room to get food, and the tenant does not slam doors shut. Regarding the cannabis: the tenant has a medical certificate allowing her to use it. She goes to the 'back of the tent' to smoke it and she has never been told not to smoke it. The tenant has not been told by any of the neighbours that it bothers them.

The tenant testified that she communicates with the landlord. She points to the multiple text messages she provided as evidence. The tenant states that if the landlord texts her, asking why noises are being made, the tenant responds by telling the landlord what is happening at the moment. The tenant did not draw my attention to any specific texts provided as evidence.

### Analysis

The tenant acknowledges receiving the Notice on March 7, 2020 when it was posted to her door. In accordance with sections 88 and 90 of the *Act*, I find the tenant was duly served with it on that date. In accordance with sections 88 and 90 of the *Act*, I find the tenant was duly served with it on March 7<sup>th</sup>, and filed an application to dispute it within 10 days, on March 13, 2020.

Section 47 of the *Act* provides that upon receipt of a Notice to End Tenancy for Cause, the tenant may, within ten days, dispute it by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files the application, the landlord bears the burden to prove on a balance of probabilities, the grounds for the 1 Month Notice.

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 in the 1 Month Notice. In the matter at hand, pursuant to section 47(1)(d), the landlord must demonstrate that:

- i. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
- ii. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord. (emphasis added)

The landlord testified that the tenant yells, swears, smokes cannabis, bangs on doors and argues with the co-tenant and her child. This behaviour causes her to lose sleep, jeopardizing her health.

Although I advised the parties that I would refer to any of the documents specifically presented to me during the hearing in accordance with rules 3.6 and 7.4, nothing in the landlord's evidence package was presented to me by the landlord. During the hearing, the landlord did not provide me with any specific dates and times of these occurrences or satisfy me that she took any steps to rectify the situation with her tenant. The landlord testified that she called the police and the fire department on her tenant, (dates unknown), however I am still left with insufficient details of the events that caused her to call the authorities. No police reports or reports from the fire department corroborating the landlord's claims were provided as evidence or referred to during the landlord's testimony.

It's important to note the use of the words **significantly, unreasonably, and seriously**, in the subsections (i) and (ii) above. The *Residential Tenancy Act* has used this strong wording to ensure that landlords can only end the tenancy if the issues with the tenant are significant, unreasonable, and/or serious. Although the tenant acknowledges she is a 'loud' person, I find the landlord has not sufficiently shown the tenant's behaviour *significantly* interferes with her quiet enjoyment of the property. Second, the landlord has not provided sufficient evidence to show her health was *seriously* jeopardized by the actions of the tenant. While a lack of sleep could be considered contrary to optimal health, evidence to prove the landlord is actually suffering from detrimental harm from the tenant was not provided. No medical experts were called as witnesses to testify or medical reports entered as evidence to corroborate a claim of seriously jeopardized health or safety. No allegation of harm from cannabis consumption was presented by the landlord in her application or testimony and the landlord did not specify any lawful right being jeopardized by the tenant. Likewise, the landlord did not provide sufficient evidence to substantiate any significant disturbance caused by 'burning' smells, other than her own testimony.

The tenant testified that the noise the landlord hears is caused by regular activities such as retrieving food from the room just below the landlord's bedroom. While potentially annoying to the landlord, I find it reasonable that the tenant would access the storage room where her food is stored multiple times per day. I do not find the tenant has *unreasonably* disturbed the landlord based on the evidence of the parties.

Rule 6.6 of the Residential Tenancy Branch Rules of Procedure 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.

I find landlord has failed to prove on a balance of probabilities, that the tenancy should end for the reasons stated on the Notice. The Notice to End Tenancy is cancelled and of no further force or effect. The tenancy will continue until ended in accordance with the *Act*.

As the tenant was successful in her application, the tenant is entitled to recover the filing fee for the cost of this application. Pursuant to section 72 of the *Act*, the tenant may deduct \$100.00 from a single rent payment due to the landlord.

Conclusion

The landlord's One Month Notice to End Tenancy for Cause is cancelled and of no further force or effect. The tenancy will continue until ended in accordance with the *Act*.

Pursuant to section 72 of the *Act*, the tenant may deduct \$100.00 from a single rent payment due to the landlord.

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: May 21, 2020

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Residential Tenancy Branch