



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

This hearing dealt with applications from two individuals, including the tenant identified above, pursuant to section 47 of the *Residential Tenancy Act* (the *Act*) for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the 1 Month Notice). The tenant and their advocate advised that the other person identified on the tenant's application is an advocate who works with the advocate who attended this hearing. On this basis and as only the tenant is identified on the Residential Tenancy Agreement for this tenancy and only the tenant's name appears on the landlord's 1 Month Notice, the tenant and their advocate agreed to my variation of the application to include only the tenant as the applicant for dispute resolution.

The landlord advised that the spelling of their last name was incorrect. With the agreement of the parties, I revised the spelling of the landlord's last name to reflect the spelling outlined above.

I also noted that this hearing did not include consideration of a second 1 Month Notice issued by the landlord to the tenant on July 23, 2020. Applications to cancel that second 1 Month Notice and by the landlord to obtain an end to this tenancy on the basis of that second 1 Month Notice are scheduled to be heard on September 10, 2020 (see files referenced above).

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another.

As the tenant confirmed that they were handed the 1 Month Notice on July 9, 2020, I find that the tenant was duly served with this Notice in accordance with section 88 of the *Act*.

As the landlord confirmed that the tenant handed him a copy of the tenant's dispute resolution hearing package and written evidence shortly after July 14, 2020, I find that the landlord was duly served with this information in accordance with sections 88 and 89 of the *Act*.

As the tenant and their advocate confirmed receiving the landlord's photographic evidence on a memory stick, I find that this evidence was served to the tenant in accordance with section 88 of the *Act*. Since the landlord did not serve the tenant with a copy of a witness statement, this written evidence was not considered served in accordance with the *Act*. However, as the witness read into the record of this hearing their full written statement, which they confirmed they drafted and signed, I have considered the contents of this statement in reaching my decision.

At the beginning of this hearing, I confirmed the email addresses of the parties and obtained their agreement to send my decision and/or orders to them at those email addresses.

#### Issues(s) to be Decided

Should the landlord's 1 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

#### Background and Evidence

On July 31, 2019, the parties entered into a month-to-month Residential Tenancy Agreement on a detached coach house separate from the landlord's home on this property. The tenancy was scheduled to begin on August 1, 2019. Monthly rent is set at \$1,000.00, payable in advance on the first of each month or the 30<sup>th</sup> of the preceding month. The landlord continues to hold the tenant's \$500.00 security deposit paid when this tenancy began.

The tenant entered into written evidence a copy of the 1 Month Notice requiring the tenant to end this tenancy by August 9, 2020, for the following reasons:

*Tenant has allowed an unreasonable number of occupants in the unit/site*

*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;*

As I noted at the hearing, the effective date of the 1 Month Notice automatically corrects to August 31, 2020. This would be the earliest possible date that a 1 Month Notice for this tenancy issued on July 9, 2020, could take effect.

The landlord testified that they believe that at least one other resident is living in this one bedroom rental suite. They provided photographic evidence taken by their surveillance camera in which there were frequent entries and exits into the rental suite by men and women at all hours of the day and night. The landlord said that they believe that the people entering the rental property are using illegal drugs and that the women visiting the property are involved in prostitution. The landlord said that neither the landlord nor their family members feel safe living in their home with the parade of people visiting the tenant's rental unit. The landlord testified that the activities happening at the rental unit have affected the day to day safety and security of their family living on the remainder of the property. Although the landlord has not provided the tenant with any written warning regarding the issues cited in their 1 Month Notice, the landlord said that they have called the tenant a number of times and spoken with them advising them that the tenant could not continue having these individuals visit them at the rental unit.

The statement from the witness who read the contents of their written statement into oral testimony for this hearing was from a friend who stayed with them at this property for 2 ½ weeks in June 2020. The witness stated that there were constant comings and goings at the rental unit during the day and night. The witness observed that women were attending the rental unit appeared to be prostitutes and that the people attending the rental unit appeared to be "on drugs." The witness also maintained that a second male appeared to be living at the rental unit.

The tenant testified that there is no prostitution occurring on the premises, nor are illegal drugs being used there. The tenant and their advocate maintained that there is only one person residing there, although a friend did stay with the tenant for a period of two or three weeks. The tenant denied that the landlord had spoken with them over the phone about the concerns raised about the activity occurring at the rental unit. They also provided written evidence and sworn testimony that the landlord has not issued any written warning regarding these activities.

### Analysis

Section 47 of the *Act* contains provisions by which a landlord may end a tenancy for cause by giving notice to end tenancy. Pursuant to section 47(4) of the *Act*, a tenant may dispute a 1 Month Notice by making an application for dispute resolution within ten days after the date the tenant received the notice. If the tenant makes such an application within ten days of receiving it, as occurred in this case, the onus shifts to the landlord to justify, on a balance of probabilities, the reasons set out in the 1 Month Notice.

At the hearing, there was conflicting evidence as to whether any additional occupants actually reside on the premises with the tenant. The landlord said that they believe one male lives in the rental unit, an individual shown repeatedly on the surveillance camera photographs. The tenant testified that this male stayed with them for a 2 ½ week period, but does not reside there and never has.

Since the parties agree that this is a one bedroom rental suite, I find that the addition of one extra occupant on the premises for what the tenant described as a 2 ½ week period would not constitute grounds to end this tenancy on the basis that the tenant had allowed an unreasonable number of occupants in the rental unit.

Turning to the other reason cited in the landlord's 1 Month Notice, I note that the landlord confirmed that they are unaware of any charges having been laid against the tenant or any of their visitors for illegal activity occurring on the rental property. The tenant's advocate noted that the photographs do not show any illegal drugs being used, nor was there any proof provided that any of those in the photographs were involved in prostitution.

The landlord and their witness may very well be correct in their allegations regarding the illegal nature of the activities the tenant is allowing to occur on the rental premises. However, in the absence of any written warning to the tenant about the activities that have raised the landlord's concerns, the landlord has provided insufficient photographic evidence or sworn testimony that would enable me to find that this tenancy should be ended for the reason cited on the 1 Month Notice (i.e., illegal activity occurring in the rental unit or at the rental property).

For the reasons cited above, I allow the tenant's application to cancel the 1 Month Notice of July 9, 2020.

Although the landlord's issuance of this 1 Month Notice should serve as a warning by the landlord to the tenant regarding the activities they allege have been occurring, the landlord may also wish to issue an additional warning letter if the activities at the rental unit identified by the landlord continue and if the landlord intends to seek an end to this tenancy for cause.

### Conclusion

The tenant's application to cancel the 1 Month Notice of July 9, 2020 is allowed. This 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: August 14, 2020

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Residential Tenancy Branch