



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNR, CNC, LRE, RR, FFT

### Introduction

The tenant filed an Application for Dispute Resolution on July 15, 2020 seeking an order to cancel the One-Month Notice to End Tenancy for cause (the “One-Month Notice”). They also applied for an order that the landlord make repairs, an order limiting or suspending the landlord’s right to enter the suite. They also applied for reimbursement of the filing fee for this hearing. The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on August 25, 2020.

In the conference call hearing I explained the process and offered each party the opportunity to ask questions. The tenant and landlord attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing.

The parties confirmed receipt of the others’ evidence prior to the hearing.

### Preliminary Matters

On their Application on July 15, 2020, the tenant applied for cancellation of a ‘10 Day Notice to End Tenancy for Unpaid Rent’. In the hearing, the tenant stated that they applied on this ground in error. The landlord confirmed they did not issue such a notice; therefore, this portion of the tenant’s claim is dismissed.

The tenant applied for an order that the landlord make repairs, and an order limiting or suspending the landlord’s right to enter the unit. I am severing these issues because they are separate requests for relief under the Act. I dismiss them as they are unrelated to the immediate issue of the One Month Notice.

Issue(s) to be Decided

Is the tenant entitled to an order that the landlord cancel or withdraw the One-Month Notice?

If unsuccessful in this Application, are the landlord entitled to an Order of Possession of the rental unit?

Is the tenant entitled to recover the filing fee for this application pursuant to section 72 of the *Act*?

Background and Evidence

I have reviewed all evidence before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this section.

The landlord gave details of the tenancy agreement, though a copy of that document was not provided. The tenancy started on February 15, 2019, with rent starting at \$1,100.00 per month. The tenant paid a security deposit of \$550.00 and a pet damage deposit of \$550.00 on February 1, 2019. The current rent amount is \$1,128.60 because of a rent increase in the past year.

The tenant provided a copy of the One-Month Notice issued July 10, 2020. The tenant confirmed this was on their unit door and the found the document there when they returned from work on that day. The effective date for the tenant to move out is August 31, 2020. On the document, the landlord indicated the following reasons on page 2:

- Tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord.
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord.
  - put the landlord's property at significant risk.

The landlord compiled the following evidence for this hearing:

- a summary of the separate reasons on the One-Month Notice;
- Appendix A and Appendix B to provided detail on the summary;
- more recent communication and “continued concerns” with the tenant – these detail more recent events, occurring after the issuance of the One-Month Notice and prior to the hearing;
- a string of emails concerning a visit from a repair team to the rental unit;
- a July 10, 2020 text message from one landlord to the repair team lead;
- an email from the repair team lead to one landlord giving detail of the tenant’s call to their office;
- a statement and photos from the upstairs tenant detailing their interactions with the tenant;
- a landlord’s written response to tenant claims – this is supplemented with copies of text messages from July 10, and emails about unit restoration work that required a hotel room short-term for the tenant.

The landlord presented their viewpoint on the issues outlined in the One-Month Notice, and made their points under each of the reasons listed on the second page:

- interfered with or unreasonably disturbed the landlord and other tenant:
  - text messages and emails “relentless. . .at all hours”
  - leaving “inappropriate” notes to the tenant who lives above – concerning heat and pet clean-up
  - not cooperating with the landlord or tenant on parking their vehicle
  - not cooperating with landlord on pest control but making complaints on pests
- seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- put the landlord’s property at significant risk:
  - this concerns a water leak from the upstairs unit;
  - tenant hampers repair process and interferes with the related insurance claim;
  - repeatedly turned fans off – this significantly interferes with the repair process – can’t carry on with repairs;
  - required a hotel stay during the time fans were used in the unit.

The tenant provided the following documentation:

- a copy of the One-Month Notice;

- a chronology to “provide a clearer picture of what actually happened”;
- an email complaint on the repair process and objections to workers’ entry – tenant has compromised immunity that leads to risk during Covid-19;
- a list of medications that cause side effects, from chemotherapy;
- details of a police complaint regarding a hole in the wall of the suite;
- photos and a friend’s account of the tenant’s experience with fans and repairs;
- a separate timeline of the repairs ;
- hotel receipts showing their stay time period.

In the hearing, the tenant covered each topic:

- the police opened a file because of “voyeurism”;
- there was a conflict with heat control with the upstairs tenant;
- they take “full responsibility for messaging”;
- remains ill and on medication because of chemotherapy – this underlines their concern with Covid-19;
- the landlord’s prepared documents for this hearing “looks very professional” though is “slanderous and sounds like a personal attack”;
- the industrial fan in her unit had a huge impact.

### Analysis

Section 47(1) of the *Act* contains the following provisions:

- (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,
    - ii. seriously jeopardized the health or safety or lawful right of another occupant or the landlord
    - iii. put the landlord’s property at significant risk.
  - . . .

Section 47(4) of the *Act* states that within 10 days of receiving a One-Month Notice a tenant may dispute it by filing an Application for Dispute Resolution.

In this case, the One-Month Notice was issued pursuant to section 47 and I accept the landlord's evidence that they served this document to the tenant on July 10, 2020.

When a landlord issues a One-Month Notice and the tenant files an application to dispute the matter, the landlord bears the burden of proving they have grounds to end the tenancy and must provide sufficient evidence to prove the reason to end the tenancy.

I find the landlord's evidence shows sufficient cause for the landlord to issue the One-Month Notice. This is based chiefly on one of the listed reasons, that where the tenant "significantly interfered with or unreasonably disturbed another occupant or the landlord." I am not considering the merits of the landlord's reasons for serving the One-Month Notice based on the health or safety rights, or risk to the property.

The reasons for my finding are as follows:

- on communication:
  - the tenant is responsible for the high frequency of messages, and admitted this during the hearing;
  - the tone and content, as well as the timing of messages, shows disrespect to the recipient of the messages – examples show "WTF" and "try getting out with a friend [for] mental health – Good luck can help you with that", with the subject of these messages being the movement of a recycling bin;
  - the disrespect is also exhibited in the commanding tone stating to the upstairs tenant: repeated messages are "Just pick up";
  - the landlord's evidence is credible on the tenant being unresponsive to messages concerning repair, which left the landlord having to make visits to the unit because of no responses;
  - the landlord's evidence is credible on the incident of the tenant purporting to be the landlord when calling the repair firm.
- on repairs:
  - the tenant hampers the landlord's ability to undertake repairs which are necessary – the evidence shows they are not communicating through normal channels, being unreasonable on the scheduling of continued work;
  - the tenant interferes unnecessarily with the landlord's ability to continue with repairs: first, the tenant interrupts the process by stopping equipment; secondly, the tenant blocks the repair team's efforts to carry on with repairs;

- the landlord mitigated the impact of fans running by arranging for a hotel for the tenant – the offer was for reimbursement on the amount paid;
  - the landlord made efforts to inform the tenant in advance of the repair team's visits; however, for reasons that are not entirely clear the tenant was not cooperating with the scheduled visits – I find the attempts on communication of the scheduled time gave the tenant the opportunity to be away from the unit, thereby alleviating her immediate concerns about Covid-19.
- on cooperation with the other tenant and landlord:
    - the evidence is sound on food or seed left outside that interferes with pest control;
    - parking is problematic insofar as the tenant is not receptive to co-operation on this matter;
    - communication shows the tenant is not open to crafting a solution on heat control, and there is no evidence of the tenant bearing responsibility for rectifying their own comfort level with heat control – this led to terse communication with the landlord and the other tenant at all hours of the day.

In summary, I find the pattern of communication in this matter is self-perpetuating and increasing in its harshness. Both the landlord and tenant gave evidence that attests to this in the hearing. In the situation with the upstairs neighbour, I find the communication is harassment, and qualifies as significant interference or unreasonable disturbance. The landlord has provided substantial verified evidence of the tenant's conduct and messaging that causes concern.

I find the One-Month Notice issued by the landlord on November 29, 2019 complies with the requirements for form and content set out in section 52 of the *Act*.

Section 55(1) of the *Act* states that if a tenant applies to dispute a landlord's notice to end tenancy and their Application for Dispute Resolution is dismissed or the landlord's notice is upheld, the landlord must be granted an order of possession if the notice complies with all the requirements of section 52 of the *Act*.

By this provision, I find the landlord are entitled to an Order of Possession.

Given that the tenancy will end, the tenant's applications to limit the landlord's entry and request for repairs are dismissed without leave to reapply. As the tenant was

unsuccessful in this application, I dismiss their request for recovery of the hearing filing fee.

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 26, 2020

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Residential Tenancy Branch