



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Code: CNC

### Introduction

In this dispute, the tenant seeks an order to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47 of the *Residential Tenancy Act* (the “Act”). It should be noted at the outset that section 55 of the Act requires that when a tenant applies for dispute resolution seeking to cancel a notice to end tenancy issued by a landlord, the arbitrator must consider if the landlord is entitled to an order of possession if the application is dismissed and the landlord’s notice to end tenancy complies with the Act.

The tenant filed an application for dispute resolution on July 31, 2020 and a dispute resolution hearing was held on September 8, 2020. The tenant, his legal counsel, the landlord’s agent, and a witness for the landlord attended the hearing and were given a full opportunity to be heard, present testimony, make submissions, and call witnesses. No issues of service were raised by the parties. I note that there are two tenants on the tenancy agreement, but only one of those tenants is named in this application.

I have only reviewed and considered oral and documentary evidence submitted meeting the requirements of the *Rules of Procedure*, to which I was referred, and which was relevant to determining the issues of this application.

Finally, I note that the tenant applied to dispute a 10 Day Notice to End Tenancy for Unpaid Rent, a One Month Notice to End Tenancy for End of Employment, and a Two Month Notice to End Tenancy for Landlord’s Use of Property. Tenant’s counsel clarified that those applications were made in error and that the only notice being disputed is the One Month Notice to End Tenancy for Cause. As such, I have amended (that is, removed) the unrelated notices from the tenant’s application.

## Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

## Background and Evidence

By way of background, the tenancy began on March 15, 2014 and monthly rent is currently \$953.00. The tenant paid a security deposit of \$452.50. A copy of the written tenancy agreement was submitted into evidence.

The landlord's agent (the "landlord") testified that the Notice was served on the tenant by having it posted to the door of the rental unit on July 21, 2020. A copy of the Notice was tendered into evidence, and the Notice indicated that it was being issued for the following reason: "Tenant or a person permitted on the property by the 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 or the landlord."

The landlord testified that over the last few months there have been complaints from other occupants of the 50-unit building that there have been people who are not tenants coming into and leaving the property. The other occupants are a "little bit afraid." She explained that it is the landlord's legal responsibility and obligation to ensure all tenants in the building have their right to quiet enjoyment protected, along with ensuring their safety. The landlord referenced "incident reports" that were submitted into evidence. The reports, or written complaints, were from a total of 4 occupants, 3 of which were anonymous.

There is a written statement from the building manager (the witness who attended the hearing) who indicates that a total of at least 8 occupants in the building approached him over the past 6 months with concerns. None of those occupants, including any of the 4 occupants who wrote the complaints, attended the hearing.

The landlord argued that the biggest concern is multiple people coming into the building, and that they may be involved in dealing drugs. She spoke of people coming into the building in the early morning hours, which has lead to concerns by the other occupants of the building.

The landlord's property manager testified that the "main concern is the security of the building." Unknown people are accessing the building at all hours. He was "not 100% sure" of what they are doing, but, "if I had to guess" that it was for drug dealing. Some of the people are "shady looking." There is also a concern about non-tenants coming into the building during a pandemic.

Both parties spoke about an incident about a week ago involving an ambulance attending to the scene. The landlord believes that it was due to a drug overdose. The tenant testified that it was because the co-tenant had smashed her head in the bathroom. This incident is irrelevant to the issue of this dispute, however. While the ambulance attendant apparently told the building manager that there was overdose, this is third party hearsay evidence that cannot be considered. (Not to mention that the BCEHS attendant would not have had legal authority to release such personal health information to the building manager.)

Tenant's counsel cross-examined the landlord and the witness. He asked if the police had been called, to which they said they had, but that because there was a lack of evidence of drug dealing, that they did not stay involved.

Both parties also spoke about a broken buzzer. However, because this matter is not relevant to the dispute I will not repeat the evidence.

The landlord, under cross-examination, reiterated that other tenants are "afraid for their safety" and as such wish to remain anonymous. She also testified that there is only "alleged drug dealing happening," and that they have no direct evidence of such.

In his testimony the tenant said that he has not received complaints from anyone. "We keep to ourselves" and has not received any warnings from the landlord about anything. They are "absolutely not" dealing drugs, and would "absolutely not" retaliate against anyone who might want to complaint about them. The tenant remarked, "all of a sudden everything happened" and "from out of nowhere" he received the Notice.

### Analysis

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. Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the ground on which the Notice is based.

The Notice indicated that the ground on which it was issued fell under section 47(1)(e)(ii) of the Act, which states that a landlord may end a tenancy by giving notice under this section if

the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that [. . .] has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, [. . .]

The landlord gave evidence that multiple occupants of the building have observed many people (who are not residents of the building) coming and going to the rental unit, and that they (the other occupants) believe that there is drug dealing going on. One complaint about drug dealing was referenced by the occupant who chose to identify himself in his complaint email. However, because the author of this complaint did not attend the hearing to verify or further explain the content of his statement, I place little evidentiary weight on the complaint.

As to the remaining three anonymous complainants, I place no evidentiary weight on their statements. There are no names, no dates, and no contact information for any of the complainants. None of the complainants attended the hearing to give evidence or to speak to the veracity of their statements. As such, I will not consider the complaints drafted by anonymous individuals as proof of anything. The rules of procedural fairness and natural justice do not permit anonymous complainants to assist in evicting a tenant.

There is, in short, no evidence that the tenant, or anyone permitted on the residential property by the tenant, has engaged in illegal activity, such as drug dealing. Mere suspicion, without corroborating evidence, is insufficient proof for me to uphold the Notice and end the tenancy. It should be added that whether the tenant was permitted to have guests in the building is irrelevant in this dispute, as it was not a ground on which the Notice was based.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the ground on which the Notice was issued.

I therefore grant the tenant's application and order that the Notice served on July 21, 2020 is cancelled and is of no force or effect. The tenancy shall continue until it is ended in accordance with the Act.

Conclusion

I grant the tenant's application.

**I hereby order that the Notice, served on July 21, 2020, is cancelled.**

This decision is made on authority delegated to me under section 9.1(1) of the Act.

Dated: September 8, 2020

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Residential Tenancy Branch