



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, FFT**

### Introduction

This hearing dealt with an application by the tenant under the *Residential Tenancy Act* (the *Act*) for the following:

- Cancellation of One Month Notice to End Tenancy for Cause (“One Month Notice”) pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee pursuant to section 72.

The parties attended and were given a full opportunity to be heard, to present affirmed testimony, make submissions, and call witnesses. I explained the hearing process and provided the parties with an opportunity to ask questions. The parties did not raise any issues regarding the service of evidence.

I have only considered and referenced in the Decision relevant evidence submitted in compliance with the Rules of Procedure to which I was referred.

### *Preliminary Issue 1*

I informed the parties that in the event I dismissed the tenants’ application to cancel the Notice and found that it was issued in compliance with the *Act*, I was required under section 55 of the *Act* to grant an order of possession in favour of the landlord. Section 55 states as follows:

*55 (1) If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant to the landlord an order of possession of the rental unit if*

*(a) the landlord's notice to end tenancy complies with section 52 [form and content of notice to end tenancy], and*

*(b) the director, during the dispute resolution proceeding, dismisses the tenant's application or upholds the landlord's notice.*

### Issue(s) to be Decided

Are the tenants entitled to the following:

- Cancellation of One Month Notice pursuant to section 47;
- An order requiring the landlord to reimburse the tenant for the filing fee.

### Background and Evidence

The parties agreed the month-to-month tenancy began on August 1, 2018 and is ongoing. Monthly rent is \$1,600.00 payable on the first of the month. The tenants paid a \$1,600.00 security deposit at the beginning of the tenancy which the landlord holds. The unit is in the basement of a residence in which the landlord also resided. A couple with a young child live in the adjoining apartment to the unit ("the neighbouring apartment").

The parties submitted considerable written and video evidence including statements from witnesses. I will not discuss all this evidence but only refer to key facts.

The landlord testified that the tenants started complaining about the noise made by the child in the neighbouring apartment in June 2020. The landlord explained that the child was home during the day because of the State of Emergency and the child's closed daycare. The tenants also complained about the occupants of the neighbouring unit's use of the shared laundry which was resolved between the parties.

The landlord testified that the landlord asked the tenants to leave the occupants of the neighbouring apartment alone. Nevertheless, the tenants confronted them more than once in a manner that scared their child and caused them to become fearful and distressed.

The landlord suggested that the tenants move out "if they were not happy". The landlord stated, "I had mentioned to her how she was making us unhappy and the other tenants with frequent complaints".

The landlord did not submit any warning letter to the tenants.

The tenants stated the noise caused by the child in the neighbouring apartment was unacceptably loud and they were acting properly in directly approaching the occupants of the neighbouring apartment about the sound.

The landlord issued a 1-Month Notice with an effective date of July 30, 2020 and served the tenants on June 29, 2020. The Notice claims the tenants significantly interfered with or unreasonably disturbed the landlord and another occupant, being the occupants of the neighbouring apartment. A copy of the Notice was submitted which is in the standard RTB form. The tenants acknowledged personal service on June 29, 2020 and filed an application for dispute on July 5, 2020.

The landlord requested an order of possession.

The tenants requested that the One Month Notice be cancelled and their filing fee be reimbursed.

### Analysis

I have considered all the submissions and evidence presented to me, including those provided in writing and orally. I will only refer to certain aspects of the submissions and evidence in my findings.

Section 47(1)(d) of the *Act* states:

***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,...*

The landlord claimed that the tenants' frequent complaints about the noise in the neighbouring apartment disturbed everyone. No warning letters were submitted as evidence.

Based on the evidence the landlord produced at the hearing, I do not find any documentation that was provided to the tenants indicating that they were given written warnings informing them that they may be in violation of the tenancy agreement because of frequently complaining which significantly interfered with the landlord and the occupants of the neighbouring apartment. Written warnings provide clarity and particulars of objectional conduct and provide tenants an opportunity to conform and comply.

In consideration of the evidence and testimony, I find that the landlord has failed to meet the standard of proof on a balance of probabilities that the tenants significantly interfered with, or unreasonably disturbed another occupant, the only grounds upon which he issued the One Month Notice.

Accordingly, I cancel the One Month Notice. The tenancy will continue until it is ended in accordance with the agreement and the Act.

As the tenants are successful in their application, they may recover the \$100.00 filing fee of the Application. In lieu of a monetary order, I direct the tenants to withhold \$100.00 from a future rent payment on one occasion only.

### Conclusion

The One Month Notice is cancelled.

The tenants may withhold \$100.00 as reimbursement for the filing fee from a future rent payment on one occasion only.

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*.

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Dated: September 29, 2020

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Residential Tenancy Branch