



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, RR, PSF, RP, LRE, OLC, FFT

### Introduction

On July 28, 2020, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking a rent reduction pursuant to Section 65 of the *Act*, seeking a provision of services or facilities pursuant to Section 62 of the *Act*, seeking a repair Order pursuant to Section 32 of the *Act*, seeking to restrict the Landlord’s right to enter pursuant to Section 70 of the *Act*, seeking an Order to comply pursuant to Section 62 of the *Act*, and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing, with G.S. attending as his advocate. The Landlord attended the hearing as well. All in attendance provided a solemn affirmation.

G.S. advised that he did not serve the Landlord the Notice of Hearing package as he did not know he was required to do so. During the hearing, he discovered the Notice of Hearing package and the instructions for service in the junk mail folder of his email. He stated that he verbally advised the Landlord of the hearing date and time. The Landlord confirmed that he did this and she stated that she called the Residential Tenancy Branch on the day of the hearing to obtain the correct numbers to call in to attend the hearing.

Based on this undisputed testimony, I am not satisfied that the Landlord was served with the Notice of Hearing package. As such, I dismiss the Tenant’s Application to dispute the Notice without leave to reapply. However, the other issues on this Application are dismissed with leave to reapply.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?
- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on February 1, 2020, that rent was established at \$900.00 per month, and that it was due on the first day of each month. A security deposit of \$450.00 was also paid.

All parties agreed that the Notice was served by mail on July 21, 2020. The reasons the Landlord served the Notice are because the “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”, because the “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 and jeopardize a lawful right or interest of another occupant or the landlord”, because the “Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park”, and because the “Tenant has assigned or sublet the rental unit/site/property/park without landlord’s written consent.” The effective end date of the tenancy was noted as August 31, 2020.

The Landlord advised that the Tenant moved “huge construction equipment” into the rental unit contrary to the tenancy agreement and that the house is not designed to hold this type of equipment. However, she was unable to explain the nature of this equipment or even describe it. She stated that she gave the Tenant a written warning in July 2020 for him to remove this equipment and he has removed all of it but one piece.

She stated that whenever she would attempt to talk to the Tenant, he would not respond to her, but he would simply video record her. This makes it uncomfortable for her when she attempts to talk to him, and she stated that G.S. has told the Tenant to put the camera away. She submitted that the Tenant also called her a “dirty, old lady.

She advised that another reason the Notice was served is because the Tenant would leave his door open and this would allow rats to enter the rental unit.

Finally, she stated that she hired a contractor to conduct minor repairs in the rental unit; however, this person would not enter the rental unit because of the amount of garbage that was strewn around the unit. As well, she stated that he also did not enter due to the COVID pandemic. She could not describe the nature of the required repairs that she wanted completed.

G.S. advised that the Tenant is a commercial painter and that no construction equipment has been moved into the rental unit. He has basic tools for his trade, but he does not have any large machinery in the rental unit. There are two sacks or tubs of hand tools stored under the covered deck.

He stated that the Landlord would berate the Tenant, calling him “dumb and a druggie”, which he has documented on video. He submitted that the rats are coming through the roof of the house, and do not enter the rental unit as the Landlord alleges.

While the Landlord has not given the proper written notice to enter the rental unit, the Tenant has provided verbal permission, on occasion, for the Landlord to enter. A contractor did enter the rental unit and did do some work in the rental unit. He refuted that the Tenant lives in a dirty house.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

As the Tenant did not serve the Notice of Hearing package, I have dismissed his Application to dispute this Notice in its entirety. However, pursuant to Section 55(1) of the *Act*, in order to grant the Landlord an Order of Possession, I must still consider the validity of the Notice.

I have reviewed the Landlord's One Month Notice to End Tenancy for Cause to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. I am satisfied that the Notice meets all of the requirements of Section 52.

Furthermore, I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

**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,
- (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
- (iii) put the landlord's property at significant risk;

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

- (i) 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, or
- (ii) has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

(f) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 [assignment and subletting];

(g) the tenant knowingly gives false information about the residential property to a prospective tenant or purchaser viewing the residential property;

When two parties to a dispute provide equally plausible accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. As such, the onus is on the party issuing the Notice to substantiate the validity of the reason for service of the Notice.

With respect to the reasons on the Notice, I find that the Landlord has provided little testimony that would justify the grounds for serving the Notice. I acknowledge that she was not served the Notice of Hearing package and did not have an opportunity to submit evidence to support the service of the Notice. However, from the testimony that she provided, I am doubtful that this would be sufficient to justify the grounds for ending the Tenancy.

Ultimately, I am not satisfied of the validity of the Notice and I find that the Notice is

cancelled and of no force and effect.

As the Tenant did not serve the Notice of Hearing package and as his Application was subsequently dismissed, I do not find that the Tenant was successful. Therefore, the Tenant is not entitled to recover the \$100.00 filing fee paid for this Application.

### Conclusion

Based on the above, I hereby order that the One Month Notice to End Tenancy for Cause of July 21, 2020 to be cancelled and of no force or effect.

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: September 2, 2020

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Residential Tenancy Branch