



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

On August 12, 2020, the Tenant submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking to cancel a One Month Notice to End Tenancy for Cause dated August 9, 2020 (“the One Month Notice”).

The Landlord and Tenant appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

### Issue to be Decided

- Does the Landlord have sufficient cause to end the tenancy?

### Background and Evidence

Both parties provided testimony agreeing that the tenancy began on February 15, 2020, on a month to month basis. Rent in the amount of \$800.00 is due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$400.00 and a pet damage deposit of \$400.00.

The Landlord served the One Month Notice to the Tenant in person on August 9, 2020. The Notice has an effective date (the date the Tenant must move out) of September 30, 2020.

The Landlord selected the following reasons for ending the tenancy within the One Month Notice:

*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 One Month Notice provides information for Tenants who receive the Notice. The Notice states that a Tenant has the right to dispute the Notice within 10 days after receiving it by filing an Application for Dispute Resolution at the Residential Tenancy Branch.

The Tenant disputed the One Month Notice on August 12, 2020 within the required time period.

The residential property contains an upper and lower suite, with the Landlord occupying the lower unit.

With respect to the reasons why the tenancy should end, the Landlord testified that when the Tenant came to view the upper suite, he explained to her that there is poor acoustics. He testified that the Tenant never mentioned that her son has any medical disability and is prone to yelling and screaming.

The Landlord testified that the Tenant is responsible for noise that is unreasonably disturbing him. He testified that the Tenant have arguments where they scream at each other. He testified that approximately three weeks after the Tenant moved in, he began to keep notes on the noise disturbances.

The Landlord testified that on February 24, 2020 he spoke to the Tenant about the yelling and screaming. The Landlord testified that the yelling and screaming continued into March and April 2002. The Landlord testified that on April 21, 2020 the yelling continued for 45 minutes. On April 22, 2020 the Landlord sent the Tenant a final warning about the disturbances.

The Landlord testified that the screaming predominantly comes from the Tenant's son; however, occasionally it is the Tenant who is also screaming. The Landlord testified that the noise disturbances range between 15 minutes to 45 minutes in duration. He

testified that the disturbances are during the daytime. The Landlord testified that the disturbances abated for a short time but began again in July 2020.

The Landlord testified that the police have attended the rental unit in April and August 2020 because the Tenant as called police to report that her son is out of control. The Landlord submitted that due to the disturbances in August 2020 he issued the One Month Notice. The Landlord provided four pages of journal notes regarding the disturbances.

In response to the Landlord's testimony, the Tenant testified she has been working with her family doctor and a school counsellor to deal with her 13-year-old sons behaviour. The Tenant provided a letter from her doctor dated August 13, 2020 which indicates she is working on improving the relationship with her son and maintaining stability. The Tenant provided a copy of a letter dated August 14, 2020 from a counsellor which indicates the Tenant is receiving family counselling to deal with the conflict between her and her son.

The Tenant testified that the Landlord was made aware that her son has difficulties. She testified that her son has ADHD and has impulse control issues. She testified that her son will not regularly take his medication. She testified that due to Covid 19, her son is not able to go to the playground and be active.

The Tenant acknowledged that her son has made noise, and she submitted that she often has to walk away until he calms down. She testified that she can get triggered by his behaviour and start yelling back. She testified that she was advised to just walk away from her son. The Tenant also testified that she was advised to call the police if she feels threatened by her son.

The Tenant testified that ever since the she disputed the One Month Notice; the Landlord has occasionally treated her poorly by calling her names and intentionally making noise to disturb her.

The Landlord is seeking to end the tenancy and receive an Order of Possession for the rental unit.

### Analysis

In the matter before me, the Landlord has the onus of proof to prove that the reasons for ending the tenancy in the Notice are valid. Based on the evidence and testimony before me, and on a balance of probabilities, I make the following findings:

The evidence before me is in agreement and clearly establishes that the Tenant is responsible for noise disturbances due to the behaviour of both her and her son.

I have considered whether or not the disturbances are reasonable based on her son having a medical condition. While the Tenant has testified that her son has ADHD and poor impulse control, and will not regularly take medication, I find that there is no medical evidence from the Tenant in support of this. I find that the reason for the noise disturbances are not solely attributable to a medical condition or disability.

I also find that the Tenant has admittedly been triggered by her son and has yelled back at her son. I find that the Tenant is responsible for contributing to the noise disturbances.

I have considered whether or not the noise disturbances amount to significant interference or an unreasonable disturbance to the Landlord. A review of the Landlord's journal notes indicates there have been 12 incidents of noise disturbances between March and August 2020.

After considering the evidence before me, I find that the Tenant is responsible for behaviour that has unreasonably disturbed the Landlord.

The Tenant's application to cancel the One Month Notice is dismissed. The tenancy is ending.

Under section 55 of the Act, when a Tenant's application to cancel a Notice to end tenancy is dismissed and I am satisfied that the Notice to end tenancy complies with the requirements under section 52 regarding form and content, I must grant the Landlord an order of possession.

I find that the One Month Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession on the effective date within the One Month Notice; however, since this Decision is dated on October 1, 2020 and rent has likely been paid for the month of October 2020, and since the Landlord agreed to give the Tenant an additional month to find other accommodation; the Landlord is granted an order of possession effective no later than 1:00 pm on October 31, 2020, after service on the Tenant. This order may be filed in the Supreme Court and enforced as an order of that Court.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated August 9, 2020, is dismissed.

The Landlord is granted an order of possession for the rental unit effective no later than 1:00 pm on October 31, 2020, after service on the Tenant.

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: October 1, 2020

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Residential Tenancy Branch