



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC CNL LRE

### Introduction

These hearings, held on October 6, 2020, and October 15, 2020, were convened as a result of the Tenant's Application for Dispute Resolution. The Tenant applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Tenant, and his friend attended the first hearing. The Landlord and their counsel also attended the first hearing. The Tenant did not attend the second hearing. The Landlord and their counsel also attended the second hearing.

All parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. At the start of the first hearing both parties confirmed receipt of each other's documentary evidence and did not take issue with the service of those documents. I find all evidence has been sufficiently served for the purposes of this proceeding.

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.

### Preliminary and Procedural Matters – Severing Issues

The Tenant applied for multiple remedies under the *Act* some of which were not sufficiently related to one another.

Section 2.3 of the Rules of Procedure states that claims made in an Application must be related to each other and that arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

After looking at the list of issues before me at the start of the hearing, I determined that the most pressing and related issues before me deal with whether or not the tenancy is ending. As a result, I exercised my discretion to dismiss, with leave to reapply, all of the grounds on the application with the exception of the Tenant's request to cancel the 2-Month Notice, as well as the Tenants' request to cancel the 1-Month Notice.

#### Preliminary and Procedural Matters – 2-Month Notice

During the hearing, the Landlord explained that the house, which contains the rental unit, is actively for sale, and had an offer on it at the time the 2-Month Notice to End Tenancy for Landlord's Use of the Property was issued, which was around August 7, 2020. The Landlord issued the 2-Month Notice under the ground that:

- All of the conditions for the sale of the rental unit have been satisfied and the purchaser has asked the Landlord, in writing, to give this Notice because the purchaser or a close family member intends in good faith to occupy the rental unit.

During the hearing, the Landlord acknowledged that all of the conditions of the sale were not satisfied at the time they issued the 2-Month Notice. Given the Landlord acknowledged the 2-Month Notice was issued prematurely, I grant the Tenant's request to cancel this Notice. The 2-Month Notice, issued on or around August 7, 2020, is hereby cancelled and of no force or effect.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the landlord's 1-Month Notice to End Tenancy for Cause (the 1-Month Notice) cancelled?
  - If not, is the Landlord entitled to an Order of Possession?

#### Background and Evidence

The Landlord issued and the Tenant received the 1-month Notice, on August 15, 2020, for the following reasons:

Tenant or a person permitted on the property by the tenant has:

- put the landlord's property at significant risk.

Under the “Details of Cause” section, the landlord specified that the Tenant went out of town, without telling them, and while he was gone, the drains backed up and overflowed into the unit, causing a lot of damage.

I acknowledge that issues with the flooding and remediation have escalated since the 1-Month Notice was issued on August 15, 2020. However, in this review, I will only address the facts and evidence which relate to why the 1-Month Notice was issued (the events leading up to the 1-Month Notice). I will only summarize and speak to points which are essential in order to determine whether there are sufficient grounds to end the tenancy. In other words, my decision will focus on the events that led up to the issuance of the 1-Month Notice (the basis for the Notice) as this is what my decision hinges upon. Not all documentary evidence and testimony will be summarized and addressed unless it relates to my findings.

### *The first hearing*

In the first hearing, the Landlord testified that the Tenant went out of country to the USA for around a month, and he returned on August 7, 2020. The Tenant confirmed he returned from the USA on August 7, 2020. The Tenant stated that the same day he returned home, he noticed several inches of standing water in the rental unit, and immediately contacted the Landlord to report it. The Landlord stated they gave the 2-Month Notice to the Tenant on August 7, 2020, so that they could do repairs to the unit before it sold. A significant portion of time during the first hearing was spent discussing what was behind both the 1-Month Notice and the 2-Month Notice, as well as what has happened since the Notices were issued. It is apparent remediation work continues to this day, and the Tenant stated he is currently staying at a friend's house (has been for a couple weeks). However, many of his belongings are still in the rental unit, despite the fact that the remediation company has asked for everything to be removed.

The Landlord stated that due to the fact that the Tenant denied their entry to the unit, as well as ServiceMaster (the remediation contractor), the flood damage, the moisture, and the mold has all gotten much worse and threatens the integrity of the entire building. The Landlord provided a letter from ServiceMaster speaking to the fact that the mold issues have spread and that proper remediation requires the unit to be vacant. ServiceMaster also noted that due to access issues, remediation work has grown in scope and continued occupancy is now hazardous. This letter was written on September 17, 2020, by a Project Manager for ServiceMaster. In this letter, ServiceMaster also speaks to the fact that they will not tolerate any altercations with the occupant of the suite.

The Landlord stated that throughout August, the Tenant refused access, on several occasions, and also had combative conversations with ServiceMaster when they arrived to assess the damage and begin work. The Landlord stated that due to the Tenant's interference, ServiceMaster packed up their tools, and stated they would not continue work as long as the Tenant was there, with his belongings, and with him interfering with work. The Landlord also stated that the Tenant also explicitly denied them access on several occasions to assess the mold issue.

The Landlord provided copies of text messages between himself and the project manager at ServiceMaster. One of these messages was sent to the Landlord on August 28, 2020, and states the following: "Hi [Landlord], let me know how the conversation with your tenant went and as soon as he is allowing access to start the work."

The Tenant explained that there were many unsuccessful conversations about where he could move during the remediation, and how the remediation could occur in a way that worked for both parties. The Tenant initially was under the impression that the renovations would only take around a week. The Tenant denies that he ever refused entry to the Landlord or the contractors.

The Tenant stated that after he got home on August 7, 2020, he went to tell the Landlord and immediately started cleaning up the flood water. The Tenant further stated that he continued cleaning and trying to air out the rental unit for the next couple of days. The Tenant explained that while he was cleaning, the Landlord issued a 2-Month Notice to End Tenancy for Landlord's Use, on August 7, 2020 (due to the pending sale of the house). The Tenant stated that on August 9, 2020, the Landlord came down with what appears to be a realty company to show the apartment. The Tenant further explained that he was supposed to be in isolation for 14 days after his return and so he did not let those individuals into the apartment because they were not wearing masks. The Tenant explained that he told the Landlord, that anyone entering the unit needed to wear a mask but the Landlord refused to.

The Tenant further stated that around August 10, 2020, the insurance adjuster came and took measurements, then on August 15, 2020, he was given the 1-Month Notice. The Tenant explained that he feels none of this is his fault, since the flood happened while he was away, and he should be compensated such that he can live elsewhere while the remediation occurs.

The Tenant stated that he eventually went to stay at a friend's house from September 4 – 8, 2020, and on September 8, 2020, when he came back, he saw ServiceMaster in the unit, doing demolition. The Tenant reiterated that this was the first time he saw ServiceMaster. The Tenant stated that he again left the apartment on September 13, 2020, for several weeks, to allow ServiceMaster to complete the remediation. The Tenant stated that he wants to continue the tenancy and he does not want to accept the Landlord's offer of 2 month's rent as compensation to mutually agree to end the tenancy.

During the first hearing, the Landlord explained that ServiceMaster initially viewed and assessed the unit on August 21, 2020. However, this date was revised at the following hearing (see below). The Landlord explained many actions and interactions following the issuance of the 1-Month Notice. However, the Landlord was reminded to focus on the basis for the Notice at the time it was issued. As such, the bulk of happenings after the issuance of the 1-Month Notice are not fully summarized in this decision.

### *The second hearing*

During the second hearing, the Landlord provided a chronological explanation as to what happened from August 7, 2020, until the issuance of the 1-Month Notice, on August 15, 2020. More specifically, the Landlord stated that the Tenant was very difficult and refused access to clean up and remediate the flood following on several occasions after his return home on August 7, 2020. The Landlord specified that the Tenant allowed them to come in on the day he got home to mop up standing water, and do some preliminary cleaning. The Landlord also stated that they had a plumber come that same day to clear the blockage in the pipe. The Landlord acknowledged that the Tenant let them in on the day of the flood, but was difficult thereafter, and routinely refused access to the Landlord and people acting on their behalf (contractors, adjusters). The Landlord explained that the Tenants actions delayed and exacerbated the mold issues, and substantially increased the scope of repairs (since the mold continued to spread while access was denied).

During the second hearing, the Landlord noted that after August 7, 2020, the Tenant stopped cooperating and became difficult. The Landlord stated that on August 8, 2020, they offered to pay the Tenant to move elsewhere and to end the tenancy, so that they could properly remediate. The Landlord stated that they were told this remediation process would take many months, so it would be best to come to an agreement about ending the tenancy. However, the Landlord stated that the Tenant informed them that he had no interest in moving out at that time nor did he have any interest in ending the

tenancy. The Landlord stated that although the Tenant alleges that the contractors were not wearing masks while entering, or attempting to enter the unit, this is not true.

During the second hearing, the Landlord was asked to clarify the dates leading up to the issuance of the Notice on August 15, 2020. The Landlord responded by saying that ServiceMaster first showed up between August 15-20, 2020. The Landlord then stated that ServiceMaster first came to the unit on August 12, 2020. The Landlord further explained that ServiceMaster came back again a week later, around August 19-20, 2020, to start their work.

### Analysis

In the matter before me, the Landlord has the onus to prove that the reason in the Notice is valid. Based on the evidence and testimony before me, I make the following findings:

I note the Landlord claims that the Tenant or a person permitted on the property by the tenant has:

- Put the landlord's property at significant risk.

In support of this ground, the Landlord provided a series of dates, conversations, and interactions between the Landlord, the Tenant, and various service contractors, following the discovery of the flood on August 7, 2020. The Landlord stated the 1-Month Notice was issued because the Tenant has obstructed the remediation by refusing access on multiple occasions.

It appears the flood was not directly caused by either party, and was an unfortunate event that occurred due a blocked sewer pipe while the Tenant was out of town for an extended period of time. The issues have clearly escalated since the flood was discovered. Much of the Landlord's testimony and evidence for this hearing points to issues that have arisen since the 1-Month Notice was issued on August 15, 2020. However, in this decision, I must determine whether or not the Landlord had sufficient cause to end the tenancy at the time the 1-Month Notice was issued. As such, I will focus on evidence and testimony relating to issues prior to August 15, 2020. I will not make any determinations regarding whether or not the behavior and interactions since August 15, 2020, are sufficient to support the "cause" selected on the 1-Month Notice.

Having reviewed the Landlord's evidence and testimony on this matter, I note the affidavit they provided does fully detail the dates of interactions and events, from August 7 through till when the Notice was issued, on August 15, 2020. During the hearing, I asked for clarity regarding what happened, and when. I note the Landlord provided several different dates for key events.

During the first hearing, the Landlord explained that ServiceMaster (the remediation contractor) initially viewed and assessed the unit on August 21, 2020. However, they also stated that the 1-Month Notice was issued (on August 15, 2020) in part because the Tenant would not allow ServiceMaster or the Landlord into the unit. Later, in the second hearing, the Landlord was again asked to clarify the dates and facts leading up to August 15, 2020. The Landlord further explained that ServiceMaster first showed up between August 15-20, 2020. Later in the second hearing, the Landlord stated that ServiceMaster first came to the unit on August 12, 2020.

I find the dates provided by the Landlord, regarding *when* one of the key contractors started work and requested access, are internally inconsistent and are not reliable. I find the Landlord's statements regarding what happened, and when were scattered unclear. I note the onus is on the Landlord to provide a reliable and clear version of events supporting why the 1-Month Notice was issued. I find the lack of clarity around the dates is problematic and it leads me to question the reliability of other pertinent factors regarding whether the Tenant denied access, and if so, when this happened. Ultimately, I do not find there is a sufficiently reliable version of events, such that I could find there is a sufficient basis to support the reasons behind the Notice, at the time it was issued; therefore, the tenant's application is successful and the Notice issued August 15, 2020, is cancelled. I order the tenancy to continue until ended in accordance with the *Act*.

The Landlord remains at liberty to issue a new Notice to End Tenancy, should any new issues arise, or if the house is eventually sold to someone who requests vacant possession for their, or their family member's occupancy. My findings only relate to the 1-Month Notice from August 15, 2020.

### Conclusion

The Tenant's application is successful. The Notice from August 15, 2020 is cancelled.

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 19, 2020

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Residential Tenancy Branch