



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT, MNDCT  
                             OPC, FFL

### Introduction

This hearing convened as a result of cross applications. In the Tenant's Application for Dispute Resolution, filed on September 1, 2020, the Tenant requested an Order canceling a 1 Month Notice to End Tenancy for Cause issued on August 27, 2020 (the "Notice"), an Order for monetary compensation from the Landlord and to recover the filing fee. In the Landlord's Application for Dispute Resolution, filed on September 30, 2020, the Landlord requested an Order of Possession based on the Notice and to recover the filing fee.

The hearing of the cross Applications was conducted by teleconference at 9:30 a.m. on October 26, 2020. Both parties called into the hearing and were provided the opportunity to present their evidence orally and in written and documentary form and to make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised. I have reviewed all oral and written evidence before me that met the requirements of the *Residential Tenancy Branch Rules of Procedure*. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

### Preliminary Matter

The Tenant named the Landlord's Manager, T.R. as the Landlord on her Application. A review of the tenancy agreement filed in evidence as well as the Notice confirms the

Landlord is a Corporation. I therefore amend the Tenant's Application pursuant to section 64(3)(c) to accurately name the Landlord.

### Issues to be Decided

1. Should the Notice be cancelled?
2. If not, is the Landlord entitled to an Order of Possession?
3. Should either party recover the filing fee?

### Background and Evidence

A copy of the tenancy agreement was provided in evidence and which confirmed that this tenancy began August 1, 2016. At the time, monthly rent was \$895.00. The Tenant also signed and agreed to a Crime Free Housing Addendum which provided in part as follows:

The Tenant/s, or any members of the Tenant's household and any person/s invited onto the Residential Property or Residential Premises by the Tenant/s or any member/s of the Tenants family shall not engage in any Criminal activity on the Premises of the Property, including but not limited to:

- A) Any drug related criminal activity
- B) Solicitation (Pimping or Prostitution activities)
- C) Street gang activity
- D) Assault or threatened assault
- E) Unlawful use of any type of Firearms or weapons
- F) Any criminal activity threatens the health, safety or welfare of the Landlord, or other Tenant/s or Persons on the Residential Property

The reasons set forth on the Notice are as follows:

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; and
- Jeopardize a lawful right or interest of another occupant or the landlord.

The Landlord provided the following additional “details of cause” on the Notice:

Tenant has son that constantly visits property. He does drugs on the property, and brings undesirables. In the evening of the 25<sup>th</sup> RCMP many of them were on site as he [A.] had a gun. Tenant has signed a Crime Free. File # 2020-[redacted for privacy].

The Landlord’s Manager testified that they have been dealing with Tenant’s son, A., for some time. Introduced in evidence were warning letters sent to the Tenant over the course of two years relating to concerns raised by the Landlord and other occupants about the Tenant’s son. She alleged he and his friends do intravenous drugs on the property and leave needles on the common grounds outside the property. C.R. also testified that the Tenant’s son’s friends have also graffitied the property.

C.R. stated that they have informed the Tenant that her son is not welcome on the property, yet he continues to frequent the property. C.R. also stated that the Tenant’s son has a key. C.R. stated that the police are familiar with the Tenant’s son.

C.R. stated that the primary reason for issuing the Notice is that on August 25, 2020, the Tenant’s son brought a gun on the property. Photos submitted in evidence by the Landlord show the Tenant’s son pointing the gun towards the park. C.R. noted that this is a family complex and there are children who live around that suite. C.R. stated that the police attended, but the Tenant’s son was gone when the police arrived.

The neighbour, J.S. also wrote a letter for the Landlord. C.R. stated that J.S. is a single mom and is afraid of the Tenant’s son. J.S.’ letter included the following:

- J.S. has resided above the subject rental unit for four years.
- She has observed ongoing high-risk behaviour of the Tenant’s “relative”.
- J.S. and her children have been woken up by the Tenant’s son and his friends yelling into the rental unit. When she looks out the window she is chastised.
- The Tenant’s son and his friends appear to be smoking crystal meth or heroine on the Tenant’s balcony and outside the unit.
- The Tenant’s son’s girlfriend has “passed out” in the staircase and appears to have urinated in the area.
- There are used condoms and intravenous drug needles as well as metal spoons and glass pipes left outside the rental unit balcony.
- The Tenant, and her guests, have yelled and sworn at J.S. as well as her one and four year old children calling them derogatory names.
- At 11:00 p.m. on August 25, 2020 J.S.’s daughter saw the Tenant’s son pointing a gun into the nearby park. She videotaped and provided still photos of this to the Landlord. When the police arrived, the Tenant’s son was not able to be found.

C.R. stated that the August 25, 2020 incident was the most concerning for the Landlord due to the risk posed to all occupants of the rental building, although she noted that this was but one of many incidents of concern with the Tenant's son.

In response the Tenant testified as follows.

The Tenant confirmed that her son A. is 35 years old and does not live with her. She stated that all the allegations about A.'s drug use are a lie. She stated the only allegation that is true is with respect to the gun but said it is a BB gun. She also claimed that the gun was broken and noted that there is a wrench in the photos of the gun.

The Tenant stated that there are no IV needles outside and further stated that her son does not smoke illegal drugs.

In terms of the incident with the gun. The Tenant stated that she was sleeping when the police arrived at approximately 10:00 p.m. on August 25, 2020. She confirmed that the police searched her house and could not find a gun or her son. She further stated that she was sleeping and wasn't even aware that her son was there and stated that as she is on the ground floor, she assumes that her son hopped over the patio.

The Tenant's granddaughter, C.E., also testified. She stated that she does not live with her grandma although she estimated that she is at her grandma's approximately 50% of the time. She confirmed that A. is her uncle. C.E. stated that she was aware about the "gun" allegation and said that the gun was a BB gun. She stated that to her knowledge her uncle A. does not do drugs.

The Tenant's spouse, D.L. also testified. He confirmed that he lives at the rental property and has lived at the rental unit since the tenancy began. D.L. stated that in terms of the "drug things" he stated that A. has never done drugs on the property but noted that A. does hang out in the "park out back" which he confirmed is the park you can see from the property. D.L. stated that A. has never used a needle and that he has never seen A. smoke drugs. D.L. stated that A's "got a problem" which he characterized as a drinking problem. He further said he has never seen A. be violent. D.L. stated that when A. is around the neighbourhood he comes to visit occasionally. D.L. stated that he has told A., "don't bring your s\*\*t to my front door". D.L. stated that A. has some problems, and he is dragging his mother into this.

In terms of the gun incident, D.L. stated that he got woken open early in the morning by about 20 police officers (two with machine guns), a helicopter, and a dog team.

Although D.L. was asleep at the time of the incident, he stated that to his knowledge the gun was a pellet gun.

D.L. stated that the woman upstairs is a “sneak” who is always taking pictures of them. He also stated that the upstairs neighbours have tried to get them evicted for “make believe”.

In reply C.R. confirmed that they are seeking an Order of Possession but are prepared to agree to an Order of Possession effective November 30, 2020 as to their understanding, A. is in jail at the present time.

D.L. confirmed that A. is currently in jail, as did the Tenant. She stated that he is there for a breach of probation. The Tenant was not aware of why A. was arrested in the first place but noted he wouldn't report to his Probation Officer. She stated that this time he may go to jail for 9 months or even longer.

### Analysis

The Landlord seeks an end to this tenancy for cause pursuant to section 47(1)(e)(ii) and (iii) which read 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:

...

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

...

(ii)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

(iii)has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;

I am satisfied, based on the testimony and evidence before me, that this tenancy should end for the reasons cited on the Notice.

I accept the Landlord's evidence that the Tenant's son has engages in illegal activity while on the rental property. I am persuaded by the Landlord's Manager's testimony, the warning letters provided in evidence from May 2018 to July 2020, as well as the letter written by the upstairs neighbour, that the Tenant's son and his guests use illegal drugs on the rental property, leave drug paraphernalia outside the rental unit, and graffiti the property. I find that this behaviour adversely affects the quiet enjoyment, security and safety of other occupants of the rental building.

I do not accept the Tenant, her granddaughter, or the Tenant's spouse' testimony that the Landlord's allegations in this respect are "make believe". The Tenant conceded that at times her son attends the rental property without her knowledge as he jumps over her balcony. The Tenant's spouse testified that the Tenant has problems and brings those problems to his mother's home. When speaking of the Tenant's drug use, the Tenant's spouse testified that the Tenant does not do drugs on the rental property, but intimated that he may be involved in such behaviour at the adjacent park. In any event, whether it is the Tenant's son, or the Tenant's son's friends, I find as a fact that they have left drug paraphernalia outside the rental unit.

Most concerning, in my view, is the incident on August 25, 2020 when the Tenant's son brought a gun to the rental unit balcony. The Tenant and her spouse conceded this incident occurred, presumably because the Landlord had photographic and video evidence to support this allegation. These photos show the Tenant's son pointing the gun at the park, which he frequents. Both the Tenant and her spouse claimed that they were asleep and unaware the Tenant's son was there. The Tenant's spouse testified to being woken up by numerous police officers, some with machine guns, a helicopter and police dogs. Presumably the other occupants of the building were disturbed and concerned by this level of police presence. When the police arrived the Tenant's son was not present. While the Tenant and her witnesses testified that the gun was a BB gun, or a pellet gun, this does not, in my view minimize the seriousness. BB guns have been fatal and pose a risk to others, not only in terms of their use, but the potential reaction of police to reports of guns. In all the circumstances I find that this incident has adversely affected the quiet enjoyment, security, safety and physical well-being of other occupants of the residential building to such an extent that this tenancy needs to end.

I accept the Landlord's evidence that they have warned the Tenant about the risk to her tenancy should her son continue to attend the rental property. This is supported by the numerous warning letters filed in evidence by the Landlord. I find the Tenant is not able to control her son's behaviour and is at times unaware of his presence at the property or his actions, thereby putting other occupants at the rental property at risk. I acknowledge

that the Tenant's spouse has tried to keep the Tenant's son's issues away from the rental unit; however, he is also clearly not able to dissuade the Tenant's son from disturbing others or putting this tenancy at risk.

For these reasons I dismiss the Tenant's request for an Order canceling the Notice.

I have reviewed the Notice and find it complies with section 52 of the *Act*; as such, and pursuant to section 55 I grant the Landlord's request for an Order of Possession. The Landlord's Manager confirmed the Landlord was agreeable to an Order of Possession effective November 30, 2020. I therefore make this Order effective 1:00 p.m. on November 30, 2020.

As the Landlord has been successful in this Application, I grant their request to recover the filing fee. Pursuant to sections 38 and 72 of the *Act* they may withhold \$100.00 from the Tenant's security deposit as recovery of these funds.

### Conclusion

The Tenant's request for an Order canceling the Notice and recovery of the filing fee is dismissed.

The Landlord is granted an Order of Possession and may retain \$100.00 from the Tenant's security deposit

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 29, 2020

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Residential Tenancy Branch