



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNC

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for the cancellation of the landlord's One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47.

The tenant attended the hearing. The landlord was represented at the hearing by its property manager ("**RH**") and its onsite manager ("**TL**"). All were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The landlord called one witness ("**NP**"), an occupant of the residential property.

### **Preliminary Issue - Service**

The tenant testified, and RH confirmed, that the tenant served the landlord with the notice of dispute resolution form and supporting evidence package.

RH testified that he attempted to serve the tenant personally with the landlord's evidence package on December 4, 2020, but that the tenant refused to accept it. He testified that he taped it to the door of the rental unit. The tenant confirmed this. She testified she refused to accept the landlord's document because she understood that they were served late.

Additionally, she testified someone ripped the evidence package off the door before she could receive it.

Rule of Procedure 3.15 states:

The respondent must ensure evidence that the respondent intends to rely on at the hearing is served on the applicant and submitted to the Residential Tenancy Branch as soon as possible. Except for evidence related to an expedited hearing (see Rule 10), and subject to Rule 3.17, the respondent's evidence must be received by the applicant and the Residential Tenancy Branch not less than seven days before the hearing.

The landlord is the respondent in this application. As such, it must serve its evidence on the tenant no later than December 9, 2020. Section 88 of the Act permits service of document by taping it to the door of the rental unit. Section 90 deems that such

documents are served three days after they are taped. As such, the landlord is deemed to have served its evidence package on the tenant on December 7, 2020. I find that this is more than seven days before the hearing. As such, the landlord has met the obligations regarding service. I accepted the landlord's evidence package into evidence.

I advised the parties of this in the hearing and asked if RH would be able to email to email the evidence package to the tenant so she could review the documents during the hearing. He did this.

### **Preliminary Issue – Conduct of Tenant**

At the outset of the hearing, I advised the parties of my expectations regarding their conduct during the proceeding, which included asking them not to interrupt each other or myself and to keep a civil tone.

Despite this, I had to mute the parties on one occasion when they started arguing directly with one another regarding service. I reminded them of my expectations and the landlord's representatives abided by them for the duration of the hearing.

The tenant, however, had to be reminded not to interrupt myself, the landlord's agents, or the witness on several more occasions, and it was only after I cautioned her that I would mute her phone until it was her turn to give evidence, that she ceased interrupting those speaking.

### **Issues to be Decided**

Is the tenant entitled to an order cancelling the Notice?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the parties, not all details of their submissions and arguments are reproduced here. The relevant and important aspects of the parties' claims and my findings are set out below.

The parties entered into a written tenancy agreement. The agreement does not indicate a starting date but was signed on March 9, 2020. RH first testified that the tenant moved in on June 1, 2020, because that was the first date the landlord received rent from her, but later conceded that she may have moved in prior but did not pay rent. He advised that, due to the COVID-19 outbreak, the landlord's records from this period of time may not be complete. The tenant testified that she moved in at the end of March or in April 2020, but was not sure. Nothing in this case turns on the start of the tenancy, so I will not discuss this matter further.

The tenancy agreement states that monthly rent is \$450. The tenant agrees that this is what she is currently paying, but argued that it is supposed to be \$350, based on her

level of income. Again, this is not relevant for the purposes of this case, so I will not discuss the matter further.

The parties agree that the tenant paid the landlord a security deposit of \$225 and that the landlord holds this deposit in trust for the tenant.

On September 30, 2020, the landlord served the tenant with the Notice, listing an effective date of October 31, 2020. The grounds to end the tenancy cited in that Notice were:

- 1) the tenant or a person permitted on the property by the tenant has:
  - significantly interfered with or unreasonably disturbed another occupant or the landlord; and
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord; and
- 2) 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.

The Notice provided additional details of the causes leading to its issuance:

Conduct: Tenant continues to threaten and harass other tenants in the building and verbally terrorizing tenants after receiving letter dated August 21 advising her of this conduct which is not acceptable behavior and the continuance could lead to ending her tenancy.

The tenant included a copy of the August 21, 2020 letter in her evidence, in which RH, in part, wrote:

We continue to receive written complaints from Tenants in the building who you have determined that should not be residing at [the residential property] and threats to them and the Resident Manager. This is unacceptable behavior and will not be tolerated.

[portion of the Act and the tenancy agreement regarding conduct]

Please be advised that we will not tolerate any further harassment or threats towards other tenants from you, and if any further complaints are acknowledged, we will have no alternative but to proceed with an EVICTION.

The landlord provided three handwritten letters from tenants in support of its application. The first, dated August 10, 2020, was from a neighbour of the tenant and alleged that the tenant “called [her] a bitch for no reason”.

The second, dated August 17, 2020, was from NP, in which he wrote that the tenant “has been causing trouble with” three other tenants, himself, and TL. NP wrote that he had been nice to the tenant when she first moved in, and gave her furniture, but that “she started trouble right away”. He wrote that the tenant has “terrorized” TL and himself and that she “hangs out with the street people, drug addicts outside, and fights with them too.” NP wrote that the tenant is “very toxic and hateful”.

The third letter, also from NP, is undated but was apparently written sometime after November 16, 2020, as it references a court appearance of the tenant that occurred on this date. In this letter NP writes that the tenant has been charged with Uttering Threats to Commit and Cause Death or Bodily Harm on November 2, 2020, and that she was put in jail that same day. NP writes that the tenant was released on bail on November 3, 2020 and had a court appearance on November 16, 2020 and another scheduled on December 14, 2020. The landlord provided no documents corroborating this statement.

The landlord also entered a petition signed by 19 occupants of the residential property into evidence. In full, it states:

We are very concerned from [the tenant]. There have been incidents of aggression of violence towards. Tenants here (Resulting in police reports) Threats inside the building and outside from her.

We the tenants are most concerned for our safety and well being( there have also been emails and faxes sent to [the landlord] on this)

The tenants name is [redacted]. And the has been terrorizing tenants verbally and is extremely homophobic and hateful and dangerous.

[sic throughout]

The landlord did not provide any statements from any of the signatories to the petition, except as recounted above. It did not provide copies of any of the complaints, emails, or faxes reference in the petition or the August 21, 2020 letter.

NP testified that, on October 18, 2020, the tenant charged at him and another occupant of the residential property while they were standing in the laundry room. He testified that she threatened to have her son murder them. He testified he called the police and they arrested her.

NP also testified that other occupants of the residential property told him that the tenant was harassing them, putting glue in their locks and screaming and threatening them. He testified that it is scary to live in a building with someone acting the way the tenant does.

The tenant flatly denied the allegations that she threatened or disturbed any of the other occupants of the building. She testified that she tries to keep to herself and helps other tenants when they are in need of help. She denied threatening to have NP or anyone

else murdered. She testified that NP and this other occupant are waging a campaign of “propaganda” against a third occupant of the residential property, taping mocking photos of this occupant on the walls of the common areas of the residential property, and that she has drawn their ire by taking them down. She testified the landlord will not intervene.

The bulk of the testimony of the tenant was unfocused and difficult to follow. It dealt with general complaints about how the residential property was run, and with gossip about other occupants of the residential property. None of this is relevant to her application, and I will not address it further, except to say that I attempted several times to have the tenant get back on track, and speak to the issues raised by the Notice, but that this was met with little success.

## **Analysis**

Rule of Procedure 6.6 states:

### **6.6 The standard of proof and onus of proof**

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

So, the landlord must prove that it is more likely than not that the tenant acted as alleged on the Notice. If it can, I will uphold the Notice, and issue an order of possession. If it cannot, I will cancel the Notice.

I must first note that the Notice was issued on September 30, 2020. As such, I cannot consider any events occurred after this date when assessing the validity of the Notice. This means that the alleged threats uttered by the tenant are not relevant to this proceeding. I explicitly make no finding as to whether the incident on October 18, 2020 occurred as NP testified. Rather, I find that as this event occurred after the Notice was issued, it cannot form a basis on which the issuance of the Notice could be justified.

I will only consider events that occurred prior to September 30, 2020 for the balance of this decision.

The landlord has provided very little in the way of direct evidence as to the conduct of the tenant. It has provided a single statement in which the tenant has allegedly called

another occupant a “bitch”. It has provided general allegations that the tenant has harassed or threatened other occupants, is “toxic” and “hateful” and “terrorized” other tenants but has not provided a single specific example of such conduct.

I assign little persuasive weight to NPs testimony that other occupants of the residential property told him that the tenant was harassing them, putting glue in their locks and screaming and threatening them. It may be that he was told this. It does not mean that it actually occurred. Second-hand evidence is considered hearsay, and is not admissible, as I do not see any reason why those occupants who suffered from the tenant’s alleged misconduct could not have attended the hearing or provided written statement regarding the conduct directly.

I assign no persuasive weight to the petition entered into evidence. It provides no examples of the tenants behaviour. I have no idea if the conduct described in the petition was witness by some or all of the signatories, or what precisely their fears are based on.

It may be that these occupants’ fears are founded, it may be that they are not. The landlord bears the burden of proof to show why these occupants feel that was and should do so by providing specific examples of incidents where the tenant has significantly interfered with or unreasonably disturbed another occupant or has jeopardized their health or safety or lawful right. The landlord has not done this.

I would have expected the landlord to provide copies of the complaint letters and emails from the occupants regarding the tenant’s conduct which led to the sending of the August 21, 2020 letter and the issuance of the Notice. These documents may have provided the evidentiary basis to prove that the Notice was validly issued.

The landlord has provided evidence regarding two specific events: the alleged death threats on October 18, 2020, and the tenant allegedly calling another occupant a “bitch”. I have already explained why I cannot consider the events of October 18, 2020 in this decision. I find that a single incident of calling someone a “bitch” does not give rise to an unreasonable disturbance warranting an eviction.

I find that the landlord has failed to discharge its evidentiary burden to show that the tenant acted as alleged on the Notice. The Notice is cancelled and of no force or effect.

## **Conclusion**

I grant the tenant’s application and cancel the Notice. The tenancy shall continue.

Dated: December 17, 2020