



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC

### Introduction

On November 3, 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 October 30, 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. The Landlord did not submit any documentary evidence in support of his notice to end the tenancy.

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/ reason to end the tenancy?

### Background and Evidence

Both parties testified that the tenancy began in November 2017 and is on a month to month basis. Rent in the amount of \$1,500.00 was originally due to be paid to the Landlord at the start of each month; however, during the tenancy the Landlord and Tenant agreed that the Tenant could pay half of the rent on the 1<sup>st</sup> day of each month and the other half on the 15<sup>th</sup> day of each month. The Landlord testified that he did not prepare a written tenancy agreement.

The Landlord served the One Month Notice to the Tenant. The Notice has an effective date (the date the Tenant must move out) of December 1, 2020.

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

*Tenant is repeatedly late paying rent*

*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*

*Tenant has engaged in illegal activity that has, or is likely to:*

- *Damage the Landlord's property*
- *Adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant or the Landlord*
- *Jeopardize a lawful right or interest of another occupant or the Landlord*

*Non-compliance with an order under the legislation within 30 days after the Tenant received the order or the date in the order.*

*Residential Tenancy Act only: security or pet damage deposit was not paid within 30 days as required by the tenancy agreement.*

The One Month Notice provides information for Tenants who receive the Notice. The Notice provides 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 November 3, 2020 within the required time period.

The Landlord was asked to provide testimony on the reasons why this tenancy should end.

#### Late Payment of Rent

The Landlord testified that the Tenant has been late paying the rent on numerous occasions. The Landlord provided testimony that the rent was paid late in January, February, April, July, August, and September of 2020.

The Landlord testified that he never told the Tenant that it was ok to pay the rent late. The Landlord testified that he mentioned his concern about late rent payments and the Tenant did not take it seriously.

In reply, the Tenant testified that there have been times when he paid the rent late; however, he spoke to the Landlord about the issue, and the Landlord told him he was ok with it being late.

The Tenant testified that he has never received any notice or warning letter from the Landlord regarding late payment of rent.

The Tenant testified that since the end of 2019, he has not received any rent receipts from the Landlord. The Tenant testified that because he never received rent receipts, he does not know if the Landlord's testimony on when the rent was paid is correct. The Tenant provided copies of rent receipts for the 2019 year.

#### Unreasonable Disturbance

The Landlord testified that there is a studio rental unit also located on the residential property that he rents to other Tenants. The Landlord testified that there have been incidents regarding parking that resulted in the Tenant approaching the occupant of the studio apartment and being verbally abusive to the occupant. The Landlord testified that he received a verbal complaint from one of the occupants who has since moved out. The Landlord testified that the Tenant also approached him and was abusive.

The Landlord's witness who lives with the Landlord testified that last year she was sitting in the Livingroom when the Tenant was at the door speaking to the Landlord. She testified that she could hear raised voices but did not hear what was actually said. She testified that she has hearing problems.

In reply, the Tenant testified that the Landlord is not telling the truth, and this is just an excuse to get him out. The Tenant testified that he was friendly with the occupant who left because he was moving out of the province. The Tenant testified that there was no issue regarding parking and / or verbal abuse.

#### Loss of Rent

The Landlord testified that back in August 2020 the Tenant withheld \$300.00 from the September rent without his approval. The Landlord testified that the Tenant had use of

a jack hammer and used it on the driveway of the property. The Landlord gave permission for the Tenant to use the jackhammer but did not agree to pay the Tenant for doing the work or permit him to deduct an amount from the rent.

In reply, the Tenant testified that the Landlord knows he does not work for free. The Tenant testified that he did not reach an agreement with the Landlord prior to deducting the \$300.00 from the rent.

### Cannabis

The Landlord testified that he gave permission to the Tenant to grow up to four cannabis plants; however, the Tenant was growing 30 plants. The Landlord stated that he observed the plants and did not say anything to the Tenant about it at the time. The Landlord testified that he has not issued a warning type of letter to the Tenant on this issue.

In reply, the Teat testified that he has only grown four plants in the rental unit.

### Analysis

Residential Tenancy Policy Guideline # 38 Repeated Late Payment of Rent provides the following information:

*The Residential Tenancy Act and the Manufactured Home Park Tenancy Act<sup>both</sup> provide that a landlord may end a tenancy where the tenant is repeatedly late paying rent.*

*Three late payments are the minimum number sufficient to justify a notice under these provisions.*

*It does not matter whether the late payments were consecutive or whether one or more rent payments have been made on time between the late payments. However, if the late payments are far apart an arbitrator may determine that, in the circumstances, the tenant cannot be said to be "repeatedly" late.*

*A landlord who fails to act in a timely manner after the most recent late rent payment may be determined by an arbitrator to have waived reliance on this provision.*

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, I make the following findings:

### Late Payment of Rent

Due to the covid 19 pandemic, the provincial government ordered that any late payments of rent from starting April 2020 up to and including August 2020 are not to be considered late.

With respect to the Landlords testimony regarding late rent for January, February and September 2020, the Landlord indicates he mentioned the issue to the Tenant and the Tenant states that he never received any warning from the Landlord. There is no documentary evidence from the Landlord that any written warnings were given to the Tenant. The Landlord testified that the rent has been paid on time since the notice to end tenancy was issued.

I find that the Landlord previously showed leniency with respect to when the rent was paid. The Tenant now appears to be aware that the Landlord expects and requires the rent to be paid when it is due under their agreement.

I find that the tenancy should not end based on this issue; however, the Tenant is cautioned that further incidents of paying the rent late may result in an end to the tenancy.

#### Unreasonable Disturbance

The Landlord provided insufficient evidence that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord. The Landlord provided no documentary evidence that he received complaints of disturbance from other occupants regarding the Tenant.

I find that the interaction between the Tenant and Landlord regarding a parking issue does not amount to interference or an unreasonable disturbance to the Landlord. It is reasonable to expect that a Tenant will raise such issues to a Landlord. There was insufficient evidence from the Landlord that the conversation rose to level of verbal abuse.

The tenancy is not ending based on this reason.

#### Loss of Rent

The Landlord and Tenant are not in agreement whether or not the Tenant was entitled to deduct \$300.00 from the September 2020 rent. Based on the testimony before me, I find that there was no verbal or written agreement entered into that permitted the

Tenant to claim his labor for jack hammering the driveway and to deduct \$300.00 from the rent.

If the parties cannot reach an agreement on this issue, the Landlord has a right to issue the Tenant a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities. The Tenant has a right to pay the outstanding amount owing within 5 days of receiving the notice or may dispute the notice. The Tenant is cautioned that it is considered a fundamental breach of a tenancy agreement if the rent is not paid within 5 days of receiving a 10 Day Notice, unless there is a legal right under the Act for withholding the rent.

The tenancy is not ending based on this reason. Section 46 of the Act permits the Landlord to end a tenancy for unpaid rent. The Landlord is required to issue a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities if he wants to pursue ending the tenancy due to unpaid rent.

### Cannabis

The Landlord stated that the Tenant had thirty cannabis plants and the Tenant stated that he has only grown four plants. The Landlord bears the burden of proof, and the Landlord did not provide any other evidence to support his testimony. In addition, the Landlord did not prove that the alleged activity was illegal. The Landlord did not provide any documentary evidence such as a relevant statute or bylaw that provides it is illegal to grow/ have more than four cannabis plants.

The tenancy is not ending based on this reason.

I find that the Landlord has not provided sufficient evidence to support the reasons to end the tenancy contained within the One Month Notice; therefore, I cancel the One Month Notice to End Tenancy for Cause, dated October 30, 2020.

I order the tenancy to continue until ended in accordance with the Act.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Tenant was successful with his application, I order the Landlord to repay the \$100.00 fee that the Tenant paid to make application for dispute resolution. I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

Conclusion

The Tenant's application to cancel the One Month Notice to End Tenancy for Cause dated October 30, 2020, is successful. The One Month Notice is cancelled.

The tenancy will continue until ended in accordance with the Act.

I authorize the Tenant to withhold \$100.00 from one (1) future rent payment.

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: January 26, 2021

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Residential Tenancy Branch