# Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

## DECISION

Dispute Codes CNC, LRE

Introduction

This hearing was set to deal with a tenant's application to cancel a One Month Notice to End Tenancy for Cause ("One Month Notice") and the tenant's request to suspend or set conditions on the landlord's right to enter the residential property.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed the parties had exchanged their respective hearing materials upon each other and I admitted them into evidence for consideration in making this decision.

I noted that the tenant had identified two issues on the Application for Dispute Resolution. I confirmed with the tenant that he continues to occupy the rental unit and seeks to continue the tenancy. As such, I found the primary issue to resolve concerned the One Month Notice.

As for the tenant's request for restrictions on the landlord's right to enter "the building", the tenant stated that he did not intend to seek restrictions on the landlord's right to enter the building, as written on the Application for Dispute Resolution. I consider this remedy to have be withdrawn and I did not consider it further.

Issue(s) to be Decided

Should the One Month Notice be upheld or cancelled?

Background and Evidence

The tenancy commenced approximately 20 years ago under a tenancy agreement with the former owner. The tenant stated there was a written tenancy agreement at one time but he no longer has a copy of it. The current landlord purchased the property on July 1, 2020 and inherited the existing tenancy. The current landlord did not receive a copy of a written tenancy agreement for the subject tenancy from the former owner.

The parties were in agreement that the tenant is currently required to pay rent of $650.00 on the first day of every month.

On July 1, 2020 the landlord issued Four Months' Notice to End Tenancy for Demolition, Renovation, Conversion of a Rental Unit ("Four Month Notice") to each of the tenants in the four-unit building indicating the following reason for ending the tenancy: "*Perform renovations or repairs that are so extensive that the rental unit must be vacant*." The tenants filed to dispute the Four Month Notices (file number referenced on the cover page of this decision). By the time the hearing commenced on October 27, 2020 two of the four rental units had been vacated, leaving the two units on the second floor occupied. The tenant before me occupies one of the units located on the second floor.

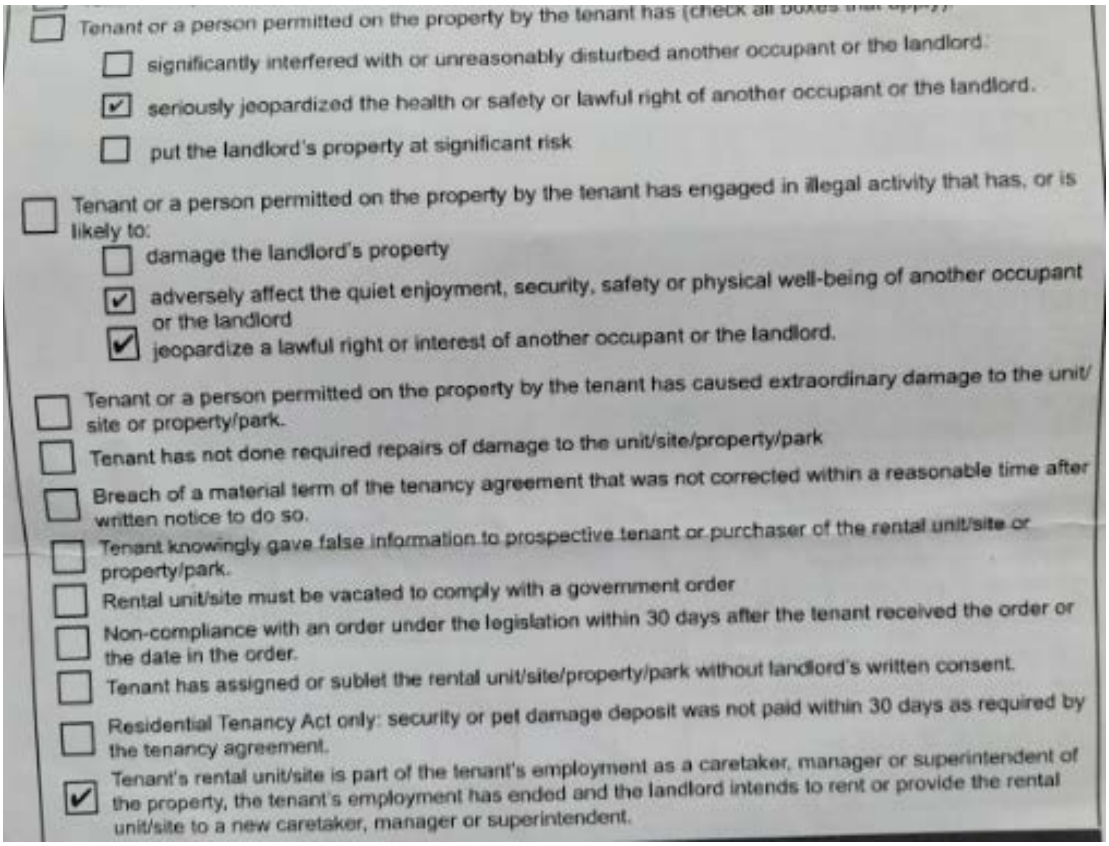
On October 27, 2020 the Arbitrator presiding over the previous dispute resolution proceeding cancelled the Four Month Notices with the effect the tenancies would continue. The Arbitrator found, in part:

> *I have reviewed the landlord's testimony and evidence, which did not include a city bylaw or confirmation from the City that no permits are necessary. I find the landlord has not met the burden of proof necessary to establish that the planned work which requires ending the tenancy is allowed by all relevant statutes or policies at the time that the Notice to End Tenancy is issued, and no permits are required. I also find that the landlord has not met the burden of proof that the work requires the vacancy of the unit in a way that necessitates ending the tenancy. I find there is no evidence the units are unsafe to live in during renovations or that essential services, such as water, would be interrupted.*

On November 9, 2020 the landlord issued the subject One Month Notice with a stated effective date of December 31, 2020. The One Month Notice was sent to the tenant via registered mail and the landlord testified the registered mail was sent on November 9, 2020. The tenant filed to dispute the One Month Notice on November 23, 2020. Neither party put forth the date the tenant received the One Month Notice and the

landlord did not provide the registered mail receipt or tracking number so as to demonstrate when the tenant received the One Month Notice. As such, I proceeded on the basis the tenant received the One Month Notice five days after mailing, as provided under section 90 of the Act, or November 14, 2020 and the tenant filed to dispute the One Month Notice within the time limit for doing so (10 day after receiving the One Month Notice).

The One Month Notice provided as evidence is in the approved form. The reasons for ending the tenancy, as indicated on page 2 of the One Month Notice are as follows:



☐ Tenant or a person permitted on the property by the tenant has (check all boxes that apply)

- ☐ 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 or a person permitted on the property by the 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.

☐ Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/site or property/park.

☐ Tenant has not done required repairs of damage to the unit/site/property/park

☐ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

☐ Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

☐ Rental unit/site must be vacated to comply with a government order

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

☐ Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

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

☑ Tenant's rental unit/site is part of the tenant's employment as a caretaker, manager or superintendent of the property, the tenant's employment has ended and the landlord intends to rent or provide the rental unit/site to a new caretaker, manager or superintendent.

The Details of Cause were provided in greater detail on a fourth page attached to the One Month Notice. The Details of Cause provided on the fourth page were reviewed during the hearing and point to two issues put forth by the landlord: (1) the tenant's refusal to permit entry to the landlord's contractor on November 5, 2020 and (2) the tenant's termination as the building caretaker.

Below, I have summarized the party's respective positions with respect to these two issues.

(1) Tenant's refusal to permit entry on November 5, 2020

On October 27, 2020 the landlord's environmental consultant issued a letter addressed the tenants of the residential property. The letter indicates that testing for hazardous materials (asbestos and lead paint) and mould would be conducted and that it was requested that the tenants voluntarily temporarily vacate their rental units while the assessments were conducted. The letter went on to state: "Typically sampling time for a limited scope HMI is not more than 1 hour and as such we would appreciate your co-operation in ensuring that no one is present whilst the sampling is being conducted."

The landlord testified that he delivered the letter the tenant on October 28, 2020. I note that the letter does not indicate the date and time the sampling would be taking place. The landlrod testified that he telephoned the tenant on october 28, 2020 to inform the tenant that it would take place on November 5, 2020 between 10:00 and 11:00 a.m. and the tenant was agreeable to permitting access to the environmental consultant. The tenant confirmed that he understood from his converstaion with the landlord on October 28, 2020 that the environmental consultant would be attending his unit to perform testing at approximately 10:30 a.m. on November 5, 2020.

The landlord testified that on November 5, 2020 the environment consultant attended the residential property but they were denied entry by the tenant. The landlord acknowledged he was not with the environmental consultant on November 5, 2020 but the environmental consultant telephoned him and the landlord in turn telephoned the tenant at approximately 11:11 a.m. The landlord testified that when he spoke to the tenant the tenant indicated he refused entry because the tenant in the other unit had denied entry. The landlord pointed to a document prepared by the environmental consultant that attended the property on November 5, 2020 and the landlord's telephone records showing he called the tenant at 11:11 a.m. on November 5, 2020.

The tenant testified that on November 5, 2020 he was aware that the environmental testing was taking place elsewhere in the building and he was at home in the morning but that nobody knocked on his door or called him to arrange to come in for testing in his unit. The tenant testified that his friend came over at 11:00 a.m. and they waited until noon before leaving for the rest of the day. The tenant stated he did not hear the telephone ring or receive a voice mail from the landlord calling at 11:11 a.m.

The landlord submitted that the tenant's refusal to permit entry on November 5,2020 is costing him extra money to perform the testing at another time and delaying the commencement of repairs and upgrades of the property which is his lawful right to do.

The tenant submitted that he does not have any issue with permitting the landlord or his contractors' entry into the rental unit.

I noted that the environmental consultant's letter describing the events of November 5, 2020 does not describe the efforts made to gain entry or what occurred. Rather, the letter merely provides a conclusion that access was denied by the "tenant".

The tenant pointed out that there are two tenants on the second floor and that the other tenant had denied entry but he did not. The landlord stated the environmental consultant's letter contained a typographical error and it should have read the "tenants".

The landlord also clarified that he expected the tenant to give the consultant access to the unit and that the landlord did not give the consultant a key or attend the unit with the consultant because the tenant did not tell him he would not be home. The landlord was of the view that the tenant was responsible for telling him if he would not be home to let the consultant in the rental unit.

(2) Termination as caretaker

The landlord stated that when he viewed the property before buying it, he was told by the former owner's son that the tenant was a caretaker and that he was provided a "break" on his rent because of his caretaking duties. The landlord submitted that the tenant is responsible for grass cutting and yard maintenance as the caretaker.

The landlord acknowledged that he does not have any documentation pointing to a caretaker agreement, employment contract or contract for yard maintenance with the tenant.

As for terminating the caretaker agreement, the landlord stated that this was accomplished by serving the tenant with the One Month Notice.

The tenant denied that he was or is the caretaker for the building. The tenant stated he had cut the grass for the former owner because he likes to cut grass and his former landlord was old so he did it voluntarily. The tenant acknowledged that he also cut the grass after the property sold to the current landlord because nobody else was doing it

and it was getting out of control. The tenant does not mind continuing to cut the grass, without any expectation for compensation, out of his own voluntary goodwill but not as the caretaker.

The landlord attempted to introduce evidence concerning a complaint of smoking and a breach letter issued to the tenant regarding smoking in January 2021. Smoking was not a reason for ending the tenancy on the One Month Notice dated November 9, 2021 and I did not permit the landlord to provide evidence on that issue. Rather, the landlord was informed that if the landlord is of the position he has a basis to end the tenancy due to smoking he may do so by issuing another One Month Notice.

Analysis

Where a notice to end tenancy comes under dispute, the landlord bears the burden to prove the tenancy should end for the reason(s) indicated on the Notice. Where multiple reasons are provided on the notice to end tenancy, it is sufficient to end the tenancy where one reason is proven.

The landlord indicated the tenant has engaged in “illegal activity” on the second page of the One Month Notice; however, the Details of Cause and the landlord’s submissions do not point to illegal activity on part of the tenant. Therefore, I do not consider those reasons further.

As for the terminating the tenancy due to termination of the tenant’s role as caretaker, in the absence of any documentation pointing to the tenant being employed or contracted as the building caretaker, I find the disputed oral evidence that the tenant was the building caretaker is insufficient to satisfy me that the tenant was the caretaker as opposed to the tenant voluntarily taking it upon himself to cut the grass. Therefore, I find the landlord did not establish the tenant was the building caretaker and the tenancy should be ended due to the tenant’s termination as the caretaker.

The most significant evidence presented to me concerned the alleged refusal of entry into the rental unit to the landlord’s environmental consultant on November 5, 2020 and I proceed to analyze the evidence concerning that matter in greater detail below.

It is undisputed that the landlord’s consultant was scheduled to gain entry into the rental unit between 10:00 and 11:00 a.m. on November 5, 2020 and the consultant did not gain entry into the rental unit on November 5, 2020. The landlord is of the position the consultant’s inability to enter the rental unit is the result of the tenant denying entry;

however, the tenant was of the position that the consultant did not seek entry during that time.

A landlord, or the landlord's agent, is permitted to enter a rental unit pursuant to the restricted right provided under section 29 of the Act which I have reproduced below:

> **Landlord's right to enter rental unit restricted**
>
> **29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:
>
> (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
>
> (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
>
> (i) the purpose for entering, which must be reasonable;
>
> (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;
>
> (c) the landlord provides housekeeping or related services under the terms of a written tenancy agreement and the entry is for that purpose and in accordance with those terms;
>
> (d) the landlord has an order of the director authorizing the entry;
>
> (e) the tenant has abandoned the rental unit;
>
> (f) an emergency exists and the entry is necessary to protect life or property.
>
> (2) A landlord may inspect a rental unit monthly in accordance with subsection (1) (b).

[My emphasis underlined]

Although the landlord gave the tenant a copy of the consultant's letter on October 28, 2020 the letter does not provide for the date and time of entry. As such, it is insufficient to constitute a 24 hour notice of entry. However, I was provided consistent testimony of the parties that the landlord had gained the tenant's oral consent to enter the rental unit on November 5, 2020 at approximately 10:00 a.m. through 11:00 a.m. by way of a telephone conversation the parties had on October 28, 2020. Therefore, I am satisfied

the landlord had the lawful right to enter the rental unit between 10:00 a.m. and 11:00 a.m. on November 5, 2020 pursuant to section 29(1)(a) of the Act.

The tenant claims that nobody knocked on his door or telephoned him between 10:00 a.m. and 11:00 a.m. to request entry. The landlord tried calling the tenant at 11:11 a.m. but this is after the time period set for the entry. The landlord pointed to the consultant's letter prepared for this dispute as a basis for finding the tenant refused entry; however, I find the content of the letter is insufficient for me to reach the conclusion that the tenant denied entry. The consultant wrote:

> The second floor of the building was not accessible to AECL at the time of the onsite investigation and therefore mould spore in air sampling was conducted at the main floor washrooms only. AECL was denied access to the second floor of the building (by the tenant residing at the second floor) during the onsite investigation on November 5th, 2020. Access to the second floor was denied at approximately 10:00 in the morning of November 5th, 2020.

As pointed out by the tenant, there are two tenants occupying two rental units on the second floor but the consultant indicates access was denied by one tenant, as indicated by the word tenant in the singular form, as opposed use of the word "tenants".

The landlord claimed the use of the word "tenant" instead of "tenants" was a typographical error by the consultant; however, I find the landlord is not in a position to allege typographical error on part of the consultant since the landlord was not present on November 5, 2020 and the landlord did not author the letter. Nor, did the landlord call the consultant to testify as to which tenant denied access.

I also note that the consultant does not describe what efforts were made to gain entry to each of the two units on the second floor and what occurred when entry was attempted to lead the consultant to reach the conclusion that access to the second floor was denied. There is no indication that the consultant knocked on the door of the rental unit, telephoned, or did something else to try to gain entry.

I am also of the view that this dispute concerning access to the rental unit could have been avoided had the landlord, or the landlord's agent, accompanied the consultant and used his key to gain entry. It is not upon a tenant to be home to give the landlord's contractors entry.

In light of the above, I find I am unsatisfied by the evidence before me that the tenant refused to permit entry to the landlord or his consultant on November 5, 2020 and I am of the view that entry may have been gained had the landlord or landlord's agent attended the property with the consultant.

Based on all of the foregoing, I find there is insufficient basis to end the tenancy for the reasons put forth by the landlord and I cancel the One Month Notice dated November 9, 2020 with the effect that the tenancy continues at this time.

Having cancelled the One Month Notice, I award the tenant recovery of the $100.00 filing fee paid by the tenant for this Application for Dispute Resolution. The tenant is authorized to deduct $100.00 from a subsequent month's rent in satisfaction of this award and in doing so the landlord must consider the rent to be paid in full.

Conclusion

The One Month Notice dated November 9, 2020 is cancelled and the tenancy continues at this time.

The tenant is authorized to deduct $100.00 from a subsequent month's rent to recover the filing fee paid for this Application for Dispute Resolution from the landlord.

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: February 12, 2021

Residential Tenancy Branch