



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 2124315 Alberta Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      **CNC**  
                                 **OPC, MNDL-S, FFL**

### **Introduction**

This hearing dealt with applications filed by both the landlord and the tenant pursuant to the Residential Tenancy Act (the “Act”).

The tenant applied for:

- An order to cancel a One Month Notice To End Tenancy for Cause pursuant to sections 47 and 55.

The landlord applied for:

- An Order of Possession for Cause pursuant to sections 47 and 55;
- A monetary Order for Damages and authorization to retain a security deposit pursuant to sections 38 and 67; and
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72.

The landlord was represented at the hearing by resident property manager, DR (“landlord”). The tenant attended the hearing and was assisted by a legal advocate, CF. As both parties were present, service of documents was confirmed. Both parties acknowledged receipt of one another’s Applications for Dispute Resolution and stated they had no issues with timely service of documents.

### **Preliminary Issue**

Rule of Procedure 6.2 allows an arbitrator to decline to hear or dismiss unrelated issues. I determined the tenant’s application to cancel the landlord’s one month notice to end tenancy for cause and the landlord’s application to end the tenancy for cause are related issues and could be heard together. The landlord’s other issue I deemed to be not sufficiently related and I exercise my discretion to dismiss it with leave to reapply at the commencement of the hearing.

Issue(s) to be Decided

Should the landlord's One Month Notice to End Tenancy for Cause be upheld or cancelled?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

A copy of the tenancy agreement was provided as evidence. The tenancy began on May 1, 2014 with rent set at \$795.00 per month. It is currently \$883.38 per month.

The landlord gave the following testimony. She served the tenant with a One Month Notice to End Tenancy for Cause on January 11, 2021 by taping it to the tenant's door. A proof of service document was also filed by the landlord. The notice to end tenancy provides an effective date of February 28, 2021 and it is dated and signed by the landlord's agent on January 11, 2021. The reasons for ending the tenancy are:

1. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;
2. the tenant or a person permitted on the property by the tenant has put the landlord's property at significant risk;
3. Tenant or a person permitted on the property by the tenant has caused extraordinary damage to the unit/sit or property/park;

Under "details of cause", the landlord writes:

*Jan 2, 2021 Time: 5:53-5:58pm, tenant exited and re-entered the front door of building, using **excessive** force to open to the door, causing damage: bent hinges, cracked door, numerous dents on front of door, closing mechanism leaking oil.*

*Jan 10, 2021 Time: 6:22pm-6:29pm, tenant exited and re-entered the front door of building, using excessive force, causing further damage to the door: door completely cracked, bent hinges, dents in front of door, door not being able to close. The security and safety of all residents in the building has been compromised. Door needs to be replaced completely. (as written)*

The landlord provided video evidence of the events on January 2 and January 10. The landlord testified that on January 2<sup>nd</sup>, some other tenants in the building heard noises such as loud cracks and contacted the maintenance person to investigate. At this point, the owners reviewed the video and saw the tenant using force to exit the building by leaning into the door. When coming back in, the tenant pushed the door into the brick wall on the outside of the door, denting it. The landlord characterizes the tenant's actions of opening the door with excessive force as vandalism.

The landlord also supplied a video taken between January 11 and March 30, 2021, depicting a selection of other building residents exiting the building in what the landlord describes as not excessively forceful.

The landlord gave the tenant a warning letter on January 8<sup>th</sup> advising him the door needed to be replaced and to refrain from using force when opening it. On January 10<sup>th</sup>, the landlord alleges the tenant once again used excessive force to open the door. Another video of the tenant exiting the building was presented as evidence.

The landlord testified that the only repairs ever done to the current front door is to have a new keypad installed in March of 2020. No maintenance was required regarding the door sticking or leaking hydraulic oil. After the tenant damaged the front door, the landlord's maintenance person installed a wooden door "stopper" that prevents the door from making contact with the brick wall. There have been no incidents of the door overswinging since the stopper was installed.

The landlord's witness, the maintenance person, KT gave the following testimony. He was hired on as the building maintenance person after the previous one was dismissed for unknown reasons. The tenant in this hearing is the previous maintenance person and he's been a "nightmare" for the witness. The witness replaced the door with a brand new door after the tenant broke the last one. It had to be very excessive force to bend the hinges of the door and he doesn't know why the tenant felt it necessary to open it with such force. In cross exam, the witness stated he did no repairs to the old door prior to January 2<sup>nd</sup> and there were no complaints with it. After the second door was broken by the tenant, he installed the "stoppers" to prevent the door from making

contact with the brick wall. He acknowledged that when the old door was pushed open far enough, it would hit the brick wall and that if the bracing had been there previously, the door would not have hit the brick wall.

The tenant gave the following testimony. He lives directly above the front door and hears when people come in and out. The tenant alleges that the door routinely required maintenance as it did not open or close properly due the cracking foundation, changes in pressure caused by tenants leaving fires doors propped open and a pre-existing crack or bow in the door jamb. The tenant argues that back in January, 2021, there was no wooden brace installed against the brick wall to stop the door from over-opening and that the hydraulic door shock elbow was the single device used to prevent such an occurrence. Had the brace been installed by the landlord, the door wouldn't have over-opened by some person unknown, causing the damage. The tenant denies he was the person who caused the damage to the door by over opening it.

The tenant provided letters from other tenants in the building. In each of the letters, the tenant's neighbours indicate there were pre-existing issues with the front door which made it sometimes easy and sometimes difficult to open. According to the statements, the maintenance person made ongoing adjustments to the hinges, screws and the hydraulic door shock elbow. The landlord questions the legitimacy of the letters, citing the misspelling of one of the letter writer's name.

The tenant called a witness, JR, who testified that he witnessed the maintenance person do repairs to the previous (orange and black) front door while he lived in the building from April to September 2019. The witness alleges the building maintenance person had "personal stuff" against the tenant and that he would try to "find stuff" against the tenant. The witness moved out of the building because he couldn't take the personal issues from the maintenance person.

### Analysis

The tenant did not dispute the landlord's testimony that the One Month Notice to End Tenancy for Cause was served to him on January 11, 2021 when it was posted to his door. I deem it served on that date in accordance with sections 88 and 90 of the *Act*. The tenant filed an Application for Dispute Resolution to dispute the notice on January 20, 2021, within the 10-day requirement pursuant to section 47 of the *Act*.

Pursuant to Rule 6.6 of the Residential Tenancy Branch Rules of Procedure, when a tenant applies to cancel a notice to end tenancy, the landlord bears the onus to prove the reasons they wish to end the tenancy. The standard of proof is on a balance of

probabilities which means that the landlord must prove it is more likely than not that the facts occurred as claimed.

The landlord relies upon the videos taken on January 2 and January 10, 2021 as their definitive proof that the tenant used excessive force to open the door, thereby “vandalizing” the property. I have reviewed each of the videos supplied as evidence by the landlord and I find the evidence does not support the argument put forward by the landlord.

While the video of January 2<sup>nd</sup> shows the tenant leaning into the door with his hand to open it, I am not convinced this action exhibits “excessive force” as alleged by the landlord. On a balance of probabilities, I find the tenant used reasonable force to exit the door and re-enter on this occasion. If the tenant took an accelerated lunge at the door with his shoulder to forcefully open it, then it’s likely the landlord would have succeeded in proving the tenant vandalized the door by opening it with excessive force. Likewise, the video of January 10<sup>th</sup> depicts the tenant leaning into the door to open it. I find that the tenant’s actions are similar if not identical to the actions of the first depicted tenant wearing a black hooded sweatshirt in the landlord’s video taken between January 11 and March 30<sup>th</sup>.

I must also take into account the written statements provided by the other tenants living in the building who corroborate the tenant’s position that the front door installed after the “orange and black” door was intermittently difficult or easy to open or close. On a balance of probabilities, I find that the tenant, like all the other tenants living in the building, was unable to determine whether the door would be easy or hard to open on the dates in question. I find the tenant used an appropriate amount of force to open the door on those dates and did not cause extraordinary damage to the property. Nor do I find the tenant seriously jeopardized the health, safety or lawful right of other occupants or the landlord or put the landlord’s property at significant risk. In my view, the landlord’s failure to install the necessary equipment to prevent the door from over-opening caused the damage to the door, the door frame and hinges.

I find that the landlord knew that the hydraulic elbow at the top of the door was inadequate to prevent the door from over-opening and ought to have had measures in place to prevent such an occurrence. It appears that the landlord has now taken these measures and the door no longer over-opens.

For the reasons stated above, I grant the tenant’s application to cancel the landlord’s notice to end tenancy. The notice to end tenancy issued on January 11, 2021 is

cancelled and of no further force or effect. The tenancy shall continue until it ends in accordance with the *Act*.

As the landlord's application was not successful, the landlord is not entitled to recover the \$100.00 filing fee for the cost of this application.

Conclusion

The notice to end tenancy cancelled and of no further force or effect.

The tenancy shall continue until it ends in accordance with the *Act*.

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: April 21, 2021

---

Residential Tenancy Branch