



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, FF

### Introduction

This hearing dealt with an Application for Dispute Resolution by the tenant filed under the Residential Tenancy Act (the “Act”), to cancel a One Month Notice to End Tenancy for Cause, (the “Notice”) issued on April 22, 2021, to have the landlord comply with the Act and to recover the cost of the filing fee.

Only the landlord appeared. This hearing was scheduled for today’s date at the request of the tenant by filing this application. On July 17, 2021 the tenant was sent a notification from the Residential Tenancy Branch reminding them of the hearing. This was sent to the tenant by email to the email address they provided. The tenant did not appear, and the hearing proceeded in the absence of the tenant.

In a case where a tenant has applied to cancel a Notice, Rule 7.18 of the Residential Tenancy Branch Rules of Procedure require the landlord to provide their evidence submission first, as the landlord has the burden of proving cause sufficient to terminate the tenancy for the reasons given on the Notice.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

### Issues to be Decided

Should the Notice be cancelled?

### Background and Evidence

The Notice was served on the tenant by registered mail. The tenant acknowledged that it was received on April 29, 2021, in their application.

The reason stated in the Notice was that the tenant has:

- Allowed an unreasonable number of occupants into the unit.
- The tenant or 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; and
  - puts the landlord's property at significant risk.
- Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The landlord's agent submits the tenant has allowed 6 occupants in a 2-bedroom unit. The agent stated that they have received numerous complaints from the unit above the tenant and the unit below the tenant, which the tenant has received multiple written warnings. These complaints consist of unreasonable noise, the tenant's children been left alone outside, yelling, screaming fighting and the eldest boy been seen beating their younger sibling. Filed in evidence are videos.

The landlord's agent testified that the most recent complaints were as follows:

On January 6, 2021 the tenant and their boyfriend were arguing at 1:00am in the morning causing the other occupants to be unreasonably disturbed. The landlord stated that when the tenant's boyfriend was asked to leave by the other occupants upstairs or they would call the police, he threatened the upper occupants and wanted them to come downstairs to fight. The landlord stated that the tenant's boyfriend left, and it was not necessary for the police to attend. Filed in evidence is a video recording.

On February 11, 2021 the tenant left four very young children in the rental unit from 7pm to 10 pm unsupervised ranging between the age of 18 months and 9 years old. The landlord's agent stated that the tenant's boyfriend arrived at approximately 9:12 pm to discover the children were alone. The agent stated the tenant has put the landlord's property at significant risk as well as their own children, as the tenant's oldest child has threatened to burn the building down in the past and has been seen beating their sibling in the yard. The agent stated that the police attended for an altercation that occurred between the tenant and their boyfriend. Filed in evidence is a video showing the tenant leaving the premises and returning several hours later. Filed in evidence is a Facebook posting, of a recording of the tenant's boyfriend showing that he found the children were left alone and was upset.

Filed in evidence are multiple complaints from other occupants.

The tenant submits in their applications the following:

“IT STATES I UTTERED THREATS TO UPPER UNIT WHICH IS NOT TRUE. ALSO STATED I HAD LEFT KIDS (3) KIDS UNATTENDED WHICH ISN'T TRUE. ALSO LAST COMPLAINT WHICH WAS ABOUT MY ELDEST SON WHICH WAS DONE OFF OF PREMISES WHICH I REDIRECTED.”

“Not asking the other side to the story. Filing a One month notice to someone with 4 children with false information”

“I never threatened upper tenant, my kids were never left alone, I redirected my son after saying inappropriate talk off the property. He is (9 years old)

[Reproduced as Written.]

### Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

How to end a tenancy is defined in Part 4 of the Act. Section 47(1) of the Act a landlord may end a tenancy by giving notice to end the tenancy.

I have considered all of the written and oral submissions submitted at this hearing, I find that the landlord has provided sufficient evidence to show that the tenant has:

- significantly interfered with or unreasonably disturbed another occupant or the landlord
- puts the landlord's property at significant risk.

In this case, I accept the undisputed evidence of the landlord that on January 6, 2021 the tenant and their boyfriend caused an unreasonable disturbance by fighting. The occupants upstairs that were disturbed asked the tenant's boyfriend to leave, and at that time they were threatened. This is supported by the video.

While I can accept the written submission of the tenant that it may not have been them that threatened the occupants upstairs; however, they are responsible for the action of anyone that they allowed to be on the premises, this would include their boyfriend. I am satisfied based on the undisputed testimony of the landlord and the video, that on January 6, 2021, that the tenant or their guest caused an unreasonable disturbance.

Further, I do not accept the written submission of the tenant that they never left their children alone. The videos show the tenant leaving and then returning approximately three hours later. It was during this time that the tenant's boyfriend attended the premises and found the children left alone. The tenant's boyfriend posted a video on their Facebook page and they were clearly upset by the tenant's actions.

Firstly, these are very young children to be left alone for any duration of time, especially when the oldest child of nine years old has a pattern of abusing their sibling and a history of making threats to burn the building down. The tenant's action lead to another altercation between her and their boyfriend that evening, and the police were involved again causing an unreasonable disturbance.

Furthermore, this was the tenant's opportunity to attend and to provide their testimony to rebut the landlord's version of events, I find with no evidence or testimony from the tenant, other than what is written in their application. I must accept the landlord's version.

I find the Notice complies with section 52 of the Act and has been proven by the landlord. I find the Notice is valid and enforceable. Therefore, I dismiss the tenant's application to cancel the Notice.

As the landlord has accepted occupancy rent for the month of July 2021, I find it appropriate to extend the effective vacancy date in the Notice to July 31, 2021, pursuant to section 66 of the Act. Therefore, I find the landlord is entitled to an order of possession effective on the above extended vacancy date.

Since I have dismissed the tenant's application, I find that the landlord is entitled to an order of possession effective **July 31, 2021, at 1:00 P.M.** This order must be served on the tenant and may be filed in the Supreme Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Since the tenant was not successful with their application, I find the tenant is not entitled to recover the filing fee from the landlord.

### Conclusion

The tenant's application to cancel the Notice, is dismissed. The landlord is granted an order of possession.

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: July 20, 2021

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Residential Tenancy Branch