



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Elevate Performance Realty &  
Management and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNC, RP, OLC, FFT

### Introduction

The tenants filed an Application for Dispute Resolution (the “Application”) on March 19, 2021 seeking a cancellation or withdrawal of the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). Additionally, they seek recompense of the Application filing fee. They subsequently filed an amendment to the application, requesting an order for repairs and the landlord’s compliance with the legislation and/or the tenancy agreement.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on August 17, 2021. Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

The landlord confirmed they received the documents that the tenants prepared for this hearing, via email.

### Preliminary Matters

The tenant via their advocate in the hearing advised they did not receive more recent documents from the landlord – on my examination and review with the parties, these are letters from the landlord that were sent to the tenants after the One-Month Notice was issued in April 2021. I advised the parties at the outset of the hearing that this evidence may or may not be considered depending on the scenario and the way it is relied upon by the landlord. On any relevant piece, I shall decide whether the tenants needed the opportunity to review that specific piece. I shall also consider whether the pieces warrant my consideration in light of other evidence concerning the reasons the

landlord issued the One-Month Notice. This is an application of the *Residential Tenancy Branch Rules of Procedure* Rule 3.17.

At the outset of the hearing, I advised both parties that the immediate issue was the landlord's issuance of the One-Month Notice. By Rule 6.2, I do not consider the other issues listed above, with the exception of reimbursement of the Application filing fee. By Rule 2.3, I find the issue of repairs, and the landlord's compliance in line with that, is unrelated and I amend the tenants' Application to exclude these matters. These portions of the tenants' Application are dismissed; however, the tenants have leave to reapply.

#### Issue(s) to be Decided

Are the tenants entitled to a cancellation of the One-Month Notice?

If unsuccessful, is the landlord entitled to an Order of Possession for the rental unit, pursuant to s. 55 of the *Act*?

Are the tenants entitled to recover the filing fee for this Application pursuant to s. 72 of the *Act*?

#### Background and Evidence

The landlord provided a copy of the tenancy agreement. It shows the tenants signed the agreement on August 25, 2020 for the tenancy starting on September 1, 2020. The rent was \$1,000 per month. The tenants paid a security deposit and pet damage deposit each of \$500. A one-page Pet Agreement accompanies and forms part of the tenancy agreement.

Both parties in their evidence provided a copy of the One-Month Notice. This shows an agent for the landlord signed the document on April 6, 2021 and attached the document to the rental unit door.

On page 2 of the document, the landlord provided the reasons for giving notice:

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

The landlord provided details of the events on page 2:

- “Significantly interfered with or unreasonably disturbed the other occupants. Multiple emails have been received. Has broken a material term and, after receiving notice of the breach, has not complied with the tenancy agreement.”
- “Since [the tenants] moved into the property September, 2020 there have been multiple complaints from neighbouring residents. Warning Notices have been issued and ignored. . .”
- “Noise made by occupants and visitors, at all hours, music and children banging on walls and dog barking. It has been reported that multiple children are roaming the property unattended and causing disturbance, dog barking excessively, occupants not properly disposing of garbage (dumping in yard), including dog fecis [*sic*], damage to property fencing.”

In the hearing the landlord presented that they issued notices to the tenant on March 12 and March 26, 2021. These are in the landlord’s evidence. The first notice refers the tenants to “details regarding the rules and regulations surrounding excessive noise and tenant obligations regarding cleanliness” as set out in the Rental Agreement and the Bylaws.” The subsequent notice of March 26 set out that there were “multiple complaints of excessive noise. . . after 11:00 p.m.” Further, the landlord advised the tenants that “Further notices may result in fines and/or eviction as per the rules and regulations in your Tenancy Agreement and the Bylaws.”

The caretaker for the property listed their “verbal interactions” had with these tenants in preparation for this hearing. This shows the subjects of complaints that prompted the landlord to issue the March 12 and March 26 notices to the tenants. These concern “loud children” and “dog barking” and “garbage in back yard.”

This document lists verbal complaints to the tenants on the day before the landlord issued the One-Month Notice. There are also incidents with loud music after April 6 where the RCMP attended.

Additionally, in the landlord evidence is a June 17, 2021 letter to the tenant advising of a fourth complaint involving the tenants’ dog. This refers to “Section 3 of the Bylaws, Use of Property.”

The tenants submitted that the last year presented challenges with lockdowns and children remaining at home during daytimes. They presented they had no ill intent at

any time since the start of the tenancy. More recently, the children are out of the house more and enrolled into organizations. Additionally, the dog is never outside for more than an hour or two. Additionally, the tenants submit this has really been one neighbour who is “piling on to them.”

In response to a direct question from the tenants in the hearing, the landlord maintained that fundamentally things had not improved over the last couple of months since the issuance of the One-Month Notice.

### Analysis

The *Act* s. 47 states, in part:

(1)A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

(h) the tenant

(i) has failed to comply with a material term; and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so

In this matter, the onus is on the landlord to provide they have cause to end the tenancy. The landlord provided documentary evidence and spoke to the reasons in oral testimony; however, I find there is not sufficient evidence to show the One-Month Notice is valid.

While the landlord indicated that the tenants’ actions were a breach of a material term of the tenancy agreement, the *Act* s. 47(1)(h) specifies there must be a written notice from a landlord to a tenant identifying this breach. The record of two letters in the evidence – March 12 and March 26 – do not specify clearly that the actions of the tenants constituted a breach. That precise language is not used by the landlord in said letters. Additionally, the letters more broadly state that the questionable behaviour is to cease “immediately” and for the tenants to take “immediate measures.” I find there is no statement setting out a reasonable time in which the tenants can correct the situation.

In line with notifying the tenants of a particular breach of a material term, I find the letters are not specific on precisely what that material term was. Rather, they refer the tenants to the Rental Agreement and Bylaws. The precise term in the rental agreement is not set forth plainly for the tenants, in order for them to be able to identify it. Similarly,

there is no record of what bylaws the landlord is referring to, and in the evidence, there is no record that the landlord made the tenants aware of the bylaw name or source, nor the exact content thereof.

More generally, there is no evidence of complaints since September 2020, though the One-Month Notice does state “Since [the tenants] moved into the property September, 2020 there have been multiple complaints from neighbouring residents.” There is no record of events or complaints prior to March 2021, yet presumably this is what the landlord relied on to add weight to their reasons for issuing the One-Month Notice.

In their evidence and testimony, the landlord demonstrated that complaints continued *after* they issued the One-Month Notice. I find this establishes to a limited degree that there was a pattern of behaviour that the landlord and others wished to address with the tenants; however, this does not help in establishing that there was an extended pattern of questionable behaviour and complaints for some time prior to the landlord issuing the One-Month Notice.

There is no record there were discussions with the tenants in an attempt to state concerns. The communication – as presented in the evidence – appears to consist of letters of warning to the tenants, obliquely referring to the tenancy agreement and bylaws. I find the nature and extent of the complaints was not known fully by the tenants, thereby further enabling them to address the issues and rectify them.

For these reasons, the landlord has not met the burden of proof to show that the reasons for the One-Month Notice are valid. I order that the One Month Notice is cancelled, and the tenancy shall continue.

As the tenants were successful in this application, I find the tenants are entitled to recover the \$100.00 filing fee paid for this application. I authorize the tenants to withhold the amount of \$100.00 from one future rent payment.

Conclusion

For the reasons above, I order the One-Month Notice issued on December 31, 2020 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: August 20, 2021

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Residential Tenancy Branch