



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

**Dispute Codes**      CNC

### **Introduction**

This hearing dealt with the tenant's applications pursuant to the *Residential Tenancy Act* (the *Act*) for:

- cancellation of the landlord's 1 Month Notices to End Tenancy for Cause (the 1 Month Notice) pursuant to section 47;
- cancellation of the landlord's 2 Month Notice to End Tenancy for Landlord's Use of Property ("2 Month Notice"), pursuant to section 49;
- a monetary order for compensation for loss or money owed under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

DK, legal counsel for the tenant, appeared with the tenant in this hearing. Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another. Both parties were clearly informed of the RTB Rules of Procedure about behaviour including Rule 6.10 about interruptions and inappropriate behaviour, and Rule 6.11 which prohibits the recording of a dispute resolution hearing. Both parties confirmed that they understood.

The landlord confirmed receipt of the tenant's applications ('Applications'). In accordance with section 89 of the *Act*, I find that the landlord duly served with the Applications. All parties confirmed receipt of each other's evidentiary materials. The landlord testified in the hearing that the tenant did not submit their evidentiary materials within the required timelines as set out in the Rules of Procedure, but confirmed that they had the opportunity to review the materials, and wanted to proceed with the scheduled hearing and consented to the consideration of the late evidence. Accordingly, the hearing proceeded as scheduled.

The tenant confirmed receipt of the 2 Month Notice dated April 13, 2021, 1 Month Notice dated April 24, 2021, and the 1 Month Notice dated June 26, 2021, which were all posted on the tenant's door. Accordingly, I find all three notices duly served to the tenant in accordance with section 88 of the *Act*.

### **Preliminary Issue – Tenant's Other Claims**

Residential Tenancy Branch (RTB) Rule of Procedure 2.3 states that claims made in an Application for Dispute Resolution must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

It is my determination that the priority claims regarding the 2 Month Notice and 1 Month Notices and the continuation of this tenancy are not sufficiently related to the tenant's application for monetary compensation. The hearing commenced at 9:30 a.m. and ended at 10:32 a.m. As the time allotted was not sufficient to allow the tenant's monetary claim to be heard along with the applications to cancel the 2 Month and 1 Month Notices to End Tenancy, I exercise my discretion to dismiss the portion of the tenants' applications unrelated to the Notices to End Tenancy with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

### **Issues**

Should the landlord's 1 Month Notices and 2 Month Notice be cancelled? If not, is the landlord entitled to an Order of Possession?

Is the tenant entitled to recover the filing fee for their applications?

### **Background and Evidence**

While I have turned my mind to all the documentary evidence properly before me and the testimony provided in the hearing, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of this application and my findings around it are set out below.

This month-to-month tenancy began on September 1, 2019, with monthly rent current set at \$800.00, payable on the first of the month. A previous hearing was held where a settlement agreement was made, and the tenant agreed to pay the landlord a security deposit in the amount of \$400.00 by September 14, 2020. The tenant still currently resides in the suite.

The tenant filed this application as they were served with three Notices to End Tenancy, and is applying to cancel all three.

The landlord served the tenant with a 2 Month Notice to End Tenancy for Landlord's Use on April 13, 2021. The landlord testified that they were 67 years old, and making plans to retire. The landlord testified that they had owned three properties, and had already sold the other two in the last year. The landlord current resides in one of the suites in the home, and wants use the suites for personal use. The landlord testified that one other unit is already vacant, and another had also been served with a 2 Month Notice to End Tenancy. The landlord testified that they have three collector bikes, and plan on using the tenant's suite as a hobby or showroom.

The tenant disputes that the landlord issued the 2 Month Notice in good faith. Counsel for the tenant pointed out that the 2 Month Notice was served the day the landlord received the previous decision where the landlord was unsuccessful in obtaining an Order of Possession pursuant to a 1 Month Notice. Counsel also pointed out the numerous Notices to End Tenancy the landlord has served the tenant with, including the two 1 Month Notices following the issuance of this 2 Month Notice.

The landlord responded that the arbitrator at the previous hearing had given the landlord leave to reapply. The landlord responded that all the Notices served on the tenant were for cause, and that they had obligations as a landlord to fulfill.

The landlord served the tenant with a 1 Month Notice to End Tenancy on April 24, 2021 providing the following grounds:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. 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.

The landlord provided the following reasons for why they feel that it is necessary to end this tenancy on the grounds provided on the 1 Month Notice. The landlord testified that the tenant's boyfriend had uttered a threat to the landlord on March 29, 2021 at approximately 5:00 p.m. The landlord testified that the ongoing issues with the tenant and tenant's boyfriend have infringed on the landlord and other tenants' right to quiet enjoyment, which eventually caused the upstairs tenant to move out on May 1, 2021. The landlord submitted in evidence a letter dated March 12, 2021 and a letter dated August 18, 2020 from the tenant upstairs. The August 18, 2020 letter was written to inform the landlord of the loud music and yelling from the tenant's unit, which caused the tenant to have difficulty sleeping. The March 12, 2021 letter was the tenant's notice

to the landlord that they were ending the tenancy due to the tenant's failure to resolve the constant noise from their unit. In that letter the tenant stated that the tenant would bang on their sliding glass door and ask the tenant to turn their television down, and when the tenant responded that they would do so if the tenant turned their music down, the tenant was told to "go fuck yourself". The tenant also noted other issues such as being disturbed by the tenant's guests, including the tenant's ex boyfriend. The landlord testified that they had difficulty keeping tenants due to these ongoing issues with the tenant and the tenant's guests.

The tenant testified that the tenant was being repeatedly served with Notices to End Tenancy which contained no merit, and the tenant's boyfriend was upset about the ongoing harassment from the landlord. The tenant testified that the boyfriend had confronted the landlord about the harassment, but denies that the boyfriend had threatened the landlord. The tenant testified that she had broken up with her boyfriend, and it has been three months since the tenant's boyfriend had attended there. The tenant testified that there were soundproofing issues with the home, which caused an ongoing dispute between the tenant and the tenant above.

On June 26, 2021, the landlord served the tenant with another 1 Month Notice to End Tenancy for the following reason:

1. The tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord.

The landlord states on the notice that a warning letter was served on the tenant on April 24, 2021, but the tenant continues to smoke in the prohibited area. The landlord testified that the tenant was provided a designated area for smoking, but still continues to smoke in an area that was outside another suite. The landlord testified that it was frustrating trying to deal with the ongoing issue. The landlord testified that they had witnessed the tenant smoking.

The tenant denies smoking in the prohibited areas, and stated that it was another party who was smoking.

### **Analysis**

Subsection 49(3) of the *Act* sets out that a landlord may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

*Residential Tenancy Policy Guideline 2: Good Faith Requirement When Ending a Tenancy* states:

*“If evidence shows that, in addition to using the rental unit for the purpose shown on the Notice to End Tenancy, the landlord had another purpose or motive, then that evidence raises a question as to whether the landlord had a dishonest purpose. When that question has been raised, the Residential Tenancy Branch may consider motive when determining whether to uphold a Notice to End Tenancy.*

*If the good faith intent of the landlord is called into question, the burden is on the landlord to establish that they truly intend to do what they said on the Notice to End Tenancy. The landlord must also establish that they do not have another purpose that negates the honesty of intent or demonstrate that they do not have an ulterior motive for ending the tenancy.”*

Although the landlord stated that they had issued the 2 Month Notice in order to use the tenant's suite as a hobby or show room, I find that the tenant had raised doubt as to the true intent of the landlord in issuance of this notice. The burden, therefore, shifts to the landlord to establish that they do not have any other purpose to ending this tenancy.

I find that the relationship between the tenant and landlord has deteriorated since the beginning of this tenancy in 2019, especially in the last year which involved the issuance of several notices to end tenancy for cause served on the tenant. The landlord has made repeated attempts to end this tenancy on different grounds, but has been unsuccessful in doing so. The 2 Month Notice was issued the day after the decision was rendered on a previous application to cancel a 1 Month Notice where the landlord was unsuccessful.

I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. Despite the explanation provided about the landlord wanting to retire and use the space for themselves instead of renting out the suite, I find that the landlord has not met their burden of proof to show that they do not have any other purpose in ending this tenancy. I find that the testimony of both parties during the hearing, as well as the evidence presented, raised questions about the landlord's good faith. The landlord had just received a decision where they were unsuccessful in ending the tenancy, and since the service of the 2 Month Notice, had served two more 1 Month Notices on the tenant. The landlord expressed their frustration over trying to deal

with the tenant and ongoing issues in the tenancy. Although the landlord does have the right to seek the end of this tenancy on the grounds provided under the *Act*, I find that the evidence supports the deterioration of the relationship between the two parties, and the frustration of the landlord in dealing with the tenant. Based on a balance of probabilities and for the reasons outlined above, I find that the landlord has not met their onus to show that they truly require and intend to use this specific rental unit for their own use, and that there is no ulterior motive for ending this tenancy.

I therefore allow the tenant's application to cancel the 2 Month Notice. The 2 Month Notice dated April 13, 2021 is hereby cancelled, and is of no force or effect.

The tenant also disputed two 1 Month Notices to End Tenancy for Cause. According to subsection 47(4) of the *Act*, a tenant may dispute a notice to end tenancy for landlord's use by making an application for dispute resolution within ten days after the date the tenant receives the notice. As the tenant disputed both notices within the required timeline, the onus, therefore, shifts to the landlord to justify the basis of the 1 Month Notices.

The landlord testified that the first 1 Month Notice dated April 24, 2021 was served on the tenant after multiple attempts to deal with the ongoing disturbance caused by the tenant and tenant's ex boyfriend. The landlord testified that the tenant's boyfriend had uttered a threat towards the landlord, which the landlord had reported to the police. The tenant did not dispute that there was a confrontation that had taken place, but that this was the result of the ongoing harassment from the landlord, as evidenced by the multiple notices to end tenancy that were cancelled. The tenant testified that it has been several months since the ex boyfriend has attended the rental address. The tenant also did not dispute the ongoing dispute with the upstairs tenant due to noise. The tenant testified that due to the lack of soundproofing in the home, there was continuous conflict with the upstairs tenant over noise.

Based on the totality of the evidence and testimony before me, I find that the tenant had provided valid explanations for the issues brought up by the landlord. I find it undisputed that there was ongoing conflict between the landlord and the tenant, and the tenant's boyfriend at the time. Although there was a confrontation, I am not satisfied that the landlord has met the burden of proof to demonstrate that the incident was unprovoked. Although I accept the landlord's testimony that the tenant's ex boyfriend's behaviour was considered intimidating and disturbing, I must consider whether the actions and behaviour have justified the end of this tenancy on the grounds provided on the 1 Month Notice. I find that the documented confrontation took place on one occasion, and in light of the disputed testimony, I am not satisfied that the landlord was threatened to the

extent that justifies the ending of this tenancy. I have also considered the testimony before me that the tenant has ended the relationship, and I am not satisfied that the evidence shows that the tenant has allowed the ex boyfriend to return following the issuance of the 1 Month Notice. I find that much of the conflict between the tenant and the landlord was due to interpersonal issues between the parties. In light of all the evidence before me, although a disturbance did take place, I am not satisfied that the extent of this disturbance is sufficient to satisfy me that the tenancy should end on the grounds that the tenant or tenant's guest had significantly interfered with or unreasonably disturbed another occupant or the landlord, or that the tenant or her guest had seriously jeopardized the health, safety, or lawful right of another occupant or the landlord.

The tenant also disputed the 1 Month Notice dated June 26, 2021. Although the landlord testified to witnesses the tenant smoke in a non-designated area despite being warned not to do so, I find that the tenant has provided conflicting evidence about this allegation. In light of the evidence and testimony before me, I find that the landlord has failed to provide sufficient evidence to support that the tenant was engaged in the described behaviour. As noted above, the burden of proof is on the landlord to support the ending of the tenancy on the basis of the 1 Month Notice. I find that the landlord has not met this onus. Under these circumstances, I am allowing the tenant's application to cancel the landlord's 1 Month Notice dated June 26, 2021. This tenancy is to continue until ended in accordance with the *Act*.

As the tenant was successful with their applications, I allow the tenant to recover the filing fee paid for the two applications for which the filing fee was paid.

### **Conclusion**

I allow the tenant's applications to cancel the two 1 Month Notices and the 2 Month Notice. The 2 Month Notice dated April 13, 2021, the 1 Month Notice dated April 24, 2021, and the 1 Month Notice dated June 26, 2021 are hereby cancelled, and are of no force or effect. This tenancy continues until ended in accordance with the *Act*.

I allow the tenant to implement a monetary award of \$200.00 for recovery of the filing fees paid by the tenant for these applications by reducing a future monthly rent payment by that amount. In the event that this is not a feasible way to implement this award, the tenant is provided with a Monetary Order in the amount of \$200.00, and the landlord must be served with this Order as soon as possible. Should the landlord fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court

The tenant's application for monetary compensation is dismissed with leave to reapply. Liberty to reapply is not an extension of any applicable timelines.

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: August 25, 2021

---

Residential Tenancy Branch