



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, FFT

### Introduction

The tenant disputes a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (“Act”). In addition, the tenant seeks to recover the application filing fee cost under section 72 of the Act.

Both parties, including the tenant’s agent, attended the hearing. No service issues were raised, and Rule 6.11 of the *Rules of Procedure* was explained. It should be noted that the tenant’s minor daughter’s name was removed from the application, as the daughter is neither a tenant on the tenancy agreement nor a legal party to this dispute.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. Is the tenant entitled to recover the cost of the filing fee?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The tenancy began November 1, 2017, rent is \$1,250.00, and the tenant paid a \$625.00 security deposit. A copy of the Residential Tenancy Agreement was in evidence.

The landlord testified that he served the Notice first by trying handing it to the tenant, to no avail. So, he slipped the Notice under the door. (While this method of service—slipping something under the door—is not a valid form of service, the tenant was deemed to have been served, given that she filed an application for dispute resolution.)

The landlord testified that he issued the Notice, a copy of which is in evidence, for two reasons: (1) the tenant's 15-year-old daughter pulled the building's fire alarm on April 29, 2021 at approximately 11:20 AM; and (2) an unknown person caused vandalism and graffiti throughout the multi-unit building. The building manager has made a few complaints to the landlord and strata about these issues. The pulling of the alarm resulted in a strata complaint and a \$100.00 strata fine being levied against the landlord. In addition, the pulling of the alarm was not only a breach of the strata bylaws but a violation of the fire code. Copies of correspondence from the strata to the landlord were in evidence. There was no additional documentary evidence

In respect of the vandalism, the landlord testified that it consisted of graffiti throughout the building and on the front door of the rental unit. He remarked that while he received a warning or a complaint from strata, there is no proof or evidence as to who, exactly, caused the graffiti or how it was caused. According to both the landlord and the tenant, the graffiti consisted primarily of what are known as graffiti tags.

The tenant is a self-described good renter who always pays her rent on time, even early on many occasions. She is a single mother. She testified that the fire alarm was pulled by her daughter, but that it was an isolated incident. The tenant's agent later added that not only was it an isolated incident, but the daughter is also a minor with no previous history of mischief. He added that the tenant is willing to pay for the fine. (The daughter, the tenant added, has since moved to Alberta to reside with her father.)

Regarding the vandalism, the tenant explained that it was all over the building and occurred on more than one occasion. However, she only received a warning about it, and there is no evidence that anyone connected to the tenant caused the graffiti. The tenant's agent reiterated the tenant's position and stressed that there is no evidence that the vandalism was caused by the tenant or any occupant or guest of the tenant.

In rebuttal, the landlord remarked that while the chances of these issues reoccurring are low, there is always some possibility that they will happen again.

Both parties occasionally spoke about the landlord's intent to sell the property, and some basic information concerning a landlord's right to enter the property in order to take photos was provided (see [section 29](#) of the Act). As explained during the hearing, the parties are encouraged to work together as amicably as possible.

## Analysis

In disputes such as this one, when a tenant applies to dispute a notice to end the tenancy, the onus is on the landlord to prove on a balance of probabilities the reasons for issuing the notice.

There are three grounds on the Notice for why it was issued ([sections 47\(1\)\(d\)\(i\), 47\(1\)\(d\)\(iii\), and 47\(1\)\(e\)\(i\)](#) of the Act), namely, the tenant or a person permitted on the property by the tenant has (1) significantly interfered with or unreasonably disturbed another occupant or the landlord, (2) put the landlord's property at significant risk, and (3) engaged in illegal activity that has, or is likely to damage the landlord's property.

Regarding the fire alarm pulling, the tenant admits that her daughter was responsible. However, there is no evidence before me to find that the act of pulling the alarm actually interfered with or unreasonably disturbed occupant or the landlord. And there is no evidence that the pulled alarm ever put the landlord's property at significant risk. Last, while the strata bylaw states that the pulling of an alarm is a nuisance, a hazard, and an unreasonable interfering of other persons, such an assumption as contained in the strata bylaw wording is not evidence of any actual interference or unreasonable disturbance for the purposes of section 47 of the Act.

In summary, taking into consideration the evidence before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving the first two grounds for issuing the Notice

Second, regarding the vandalism, the parties agreed that there is no evidence proving who vandalized the property. I would agree. While the landlord's rental unit's front door apparently was the only rental unit door to have been tagged, this alone does not prove that the tenant, an occupant, or a guest of the tenant, tagged the door.

Indeed, the only document submitted by the parties that hints at a possible perpetrator is Loreta Strata Management Ltd.'s "Warning Notice." There is the following statement contained within the notice:

A witness had identified the boyfriend of the daughter from unit 417 as having graphitized [*sic*] throughout the building on the walls, doors, windows and railings. There are also markings on the door of 417, which must be removed.

Leaving aside the obvious error of describing the act of graffitiing as graphitizing (in which carbon and low alloy steel breaks down after long exposure to elevated temperatures of 700°C), there is nothing corroborating the statement in the warning notice. We have no idea who the witness is, no identification of the boyfriend, and no additional evidence such as video or photographs of the vandalism. Such a statement made by an unknown third party is hearsay, and it carries no evidentiary weight.

Taking into careful consideration all of the evidence before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has also not met the onus of proving the third ground on which the Notice was issued. Consequently, the Notice is cancelled effective immediately. The Notice is of no legal force or effect and the tenancy shall continue until it is ended in accordance with the Act.

Section 72 of the Act permits me to award compensation for the cost of the filing fee to a successful applicant. As the tenant succeeded in her application, she is awarded \$100.00. To this end, the tenant is authorized under section 72(2)(A) of the Act to deduct \$100.00 from the rent for September or October 2021.

### Conclusion

I hereby grant the tenant's application.

It is hereby ordered that the Notice is cancelled immediately, and it is of no legal force or effect. The tenancy shall continue until it is ended in accordance with the Act.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: August 14, 2021

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Residential Tenancy Branch