



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC**

### Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for cancellation of the Landlord's One Month Notice to End Tenancy for Cause pursuant to Sections 47 and 62 of the Act.

The hearing was conducted via teleconference. The Landlord's Agent, EC, their counsel and one witness, MC, attended the hearing at the appointed date and time and provided affirmed testimony. The two Tenants, SV and ZD, attended the hearing at the appointed date and time, and provided affirmed testimony.

Both parties and the witness were advised that Rule 6.11 of the Residential Tenancy Branch Rules of Procedure prohibits the recording of dispute resolution hearings. Both parties and the witness testified that they were not recording this dispute resolution hearing.

Both parties were each given a full opportunity to be heard, to present affirmed testimony, to call witnesses, to question the other party, and make submissions.

Tenant SV served EC with the Notice of Dispute Resolution Proceeding package in person on July 6, 2021 (the "Notice of Dispute Resolution"). Tenant SV served all the evidence for the application by email on September 28 and 29, 2021. EC and counsel confirmed receipt of the DR package and all the evidence. Pursuant to Section 89(1)(b) of the Act and Section 43(2) of the Residential Tenancy Regulation, I find the Landlord was served in accordance with the Act.

Issue(s) to be Decided

Is the Tenant entitled to cancel the One Month Notice to End Tenancy for Cause?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The tenancy began August 15, 2019 with a two-year fixed term lease. The tenancy is now month to month with monthly rent of \$7,500.00 payable on the first day of each month. A security deposit of \$3,500.00, and a pet damage deposit of \$3,500.00 were collected at the start of the tenancy and are still held by the Landlord.

The Landlord served the Tenants with a One Month Notice to End Tenancy for Cause in person on June 1, 2021 (the "One Month Notice"). The Tenants confirmed receipt of the One Month Notice.

The cause specified in the One Month Notice was that the tenant or a person permitted on the residential property by the tenant has (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The reasons testified to at the hearing were set out in EC's documentary evidence as follows:

1. *[EC] was advised that the Strata's concern with [the Tenant's] tenancy arose following an incident on May 1, 2020 where [SV] yelled at [MC] ("Incident #1"). Incident #1 reportedly occurred when [the Tenant's] vehicle remained in its parking stall during a scheduled parking garage cleaning. [EC] has been advised that [MC] called the police as a result of Incident #1.*
2. *Following Incident #1, there was another negative interaction between [the Tenants] and [MC] that involved [the Tenants'] dog. [The Tenants'] dog reportedly nipped at [MC]. EC has been told by the Strata that [MC] has an overwhelming fear of dogs. This event occurred shortly after Incident #1 but is not listed amongst*

*the Details of Causes for terminating the tenancy in the One Month's Notice to End Tenancy for Cause form.*

3. *On October 1, 2020, EC was advised by the Strata of an incident that occurred on September 23, 2020 during which [the Tenants'] dog reportedly lunged at [MC] ("Incident #2"). The Strata also advised EC that [ZD] later had a verbal altercation with [MC] discussing Incident #2 and that [ZD] made offensive comments about [MC's] mental health to the Strata. The Strata's position following Incident #2 was that [the Tenants] had breached bylaw 3.1 and asked for the [the Tenants'] response to the allegations.*
4. *On May 25, 2021, EC was advised by the Strata that [SV] had harassed [MC] that day ("Incident #3"). The Strata advised that there was a third party witness to the incident but provided no further details of Incident #3.*

SV testified that the first time he met MC, she made it clear that she did not like renters.

Item #1:

This incident dealt with a time set for a cleaning of the parking garage, and a heated exchange between SV and MC. The strata council's bylaws stipulate:

*10.12 The strata council will arrange for periodic cleaning of the parking garage. Owners, tenants and occupants are required to facilitate cleaning by moving their vehicles at cleaning times designated by the strata council in a notice posted conspicuously on the common property, failing which an owner shall be responsible for any additional costs of removing and cleaning up excessive dirt or oil in such owner's stalls.*

SV's work is international in nature and requires him to work unusual hours. In the morning of the first incident, he was sleeping after a night of working. SV said he recently had surgery on his hip. At 8 AM, MC who was overseeing the cleaning of the parking garage noticed that SV's vehicles were still parked inside.

SV testified that no notices were posted on the common property for this scheduled cleaning. On the day of cleaning, as the Tenants were not made aware of the event, they had not removed their vehicles from the parking garage. MC rang the Tenants' intercom, in a 5-minute timespan, over 20 times, to tell the Tenants to move their car.

SV stated he told MC many times about the volume of their intercom system which rings very loudly in three rooms of the rental unit. He has asked MC to text him if they are needed.

The Tenants have a Miniature Australian Shepherd that EC said is very old and has emotional problems. The loud ringing intercom upsets the Tenants' dog, and EC testified that MC has been asked to text the Tenants if she needs anything from them.

ZD had previously gone downstairs to investigate why their intercom was ringing. SV stated he also went downstairs to move his vehicles. SV said he was upset with the incessant intercom buzzes. He was barefoot because he could not bend over after the surgery to tie his shoes, he said the videos submitted into evidence show him being angry. After some angry words with MC, SV stated he moved his car about five blocks away and had to walk back to the building barefoot. When he returned to the building, SV testified that MC and her husband were standing in the entrance way and notified SV that she had called the police.

ZD submitted *the police went up to talk with SV and mentioned that the footage was only showing one side and not from the beginning of the incident. The officer also said that this is not a matter for police but for counsel as it appeared to be a disagreement and SV mentioned he tried to apologize and [MC] refused to hear it.* The Tenants testified that the police suggested he apologize to MC in their presence. MC again refused to hear it.

Item #2:

This incident involved MC and an encounter with ZD's dog. ZD was cleaning the vestibule in her rental unit and because the door that enters their home does not stay shut, the dog was with her in the entrance hall. The elevator door opened, and MC was there. ZD said that MC kicked her dog in the face, then ZD grabbed her dog. ZD stated the animal control people said this was not an incident where they needed to be involved.

Item #3:

ZD said she was returning to the rental unit from walking her dog. ZD testified that the dog was on a foot long leash, when the elevator door opened MC was there. ZD said MC started screaming. The dog started barking.

Item #4:

SV said he went outside to hold a taxi that was called for ZD. MC was outside standing in the middle of the path so SV could not pass to get the taxi. SV testified that MC is banned from talking to him. He stated he said to her 'you don't have to be a bitch.'

EC submitted that they do not have any problems with the Tenants. EC said the reason why the One Month Notice was issued on the Tenants was because the strata council instructed the Landlord to issue the notice. EC stated the strata council's complaints stem from three building bylaw infractions (Items #1, #3 and #4).

Witness MC's Statements:

MC testified that she works in the building but does not reside there.

Item #1:

MC testified that the building does not post notices in the elevators, instead emails are sent to the owners giving them 48 hours notice that work is going to be done. MC stated that she noticed at 11 AM that the Tenants' vehicles still remained in the parking garage. MC testified that she called the Tenants on their cell phone, but he did not answer, so she used the intercom.

MC first saw ZD come down to the parking garage. MC stated that ZD explained to her that you buzzed us, and my dog is sensitive to the intercom noise. MC then saw SV come into the parking garage. MC asserted that SV came towards her and lifted his right hand. She also stated that SV's face came to MC's face. MC said SV was angry, saying profanities, so she backed up. MC's husband stepped between MC and SV, then they went up to the lobby. MC called the police, and the police took her statement. The police observed the building videos from the parking garage cameras. MC said the police told her this was a serious incident.

MC stated that the police went up and spoke to SV. The police returned to MC's office with SV saying he would like to speak to you. MC said she refused, but her husband spoke to SV. MC testified she relayed the events to her employer and the strata council. The Landlord did not provide any police report evidence for this matter. MC stated no assault charges were ever laid for this incident.

Item #2:

MC said this event occurred on May 5, 2020. MC was going to a floor above the Tenants' rental unit for construction work that was happening. The elevator opened at the Tenants' floor, which is below the construction level. The unleashed dog lunged at her and bit her right leg on the calf. ZD pulled the dog off MC. MC said she took pictures of the dog bite, but these pictures were not submitted into evidence. MC said she was advised to go see a doctor, and she received a tetanus shot. She said she experienced an allergic reaction to the tetanus shot. The strata council's lawyer called animal control.

Item #3:

MC relayed a second incident which involved the dog lunging at her. She had entered the elevator on the P2 level on her way up to her office. The elevator opened on the P1 level and ZD was with her leashed dog. MC said the dog lunged at her, she said she yelled or kind of screamed. This event shocked and frightened her. ZD pulled the leash to keep the dog back, the door closed, and MC went to her office.

MC testified that ZD came to her office to speak with her. The dog was still with her. MC stated that ZD said because MC screamed the dog lunged at her. MC stated that she needs to keep distance between herself and the Tenants. MC asked her to please leave her office.

Item #4:

MC did not provide any evidence with regard to the taxi incident.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim. Where a tenant applies to dispute a notice to end a tenancy issued by a landlord, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the notice to end tenancy was based.

The Landlord's One Month Notice is based on Section 47(d)(i) and (ii), the Act says:

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

....

- (d) the tenant or a person permitted on the residential property by the tenant has
  - (i) significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - (ii) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or

....

I find that the One Month Notice was served according to Section 88(a) of the Act on June 1, 2021.

EC testified that they have no problems with the Tenants and issued the One Month Notice because the strata council instructed her to do so because MC is frightened and afraid of the Tenants and is afraid of dogs.

The Landlord's counsel referred me to Section 3.1 of the strata's bylaws. The Notice of Dispute Resolution package that initiated these proceedings is governed under the *Residential Tenancy Act*, and I do not have jurisdiction to make decisions under the strata's bylaws.

All the incidents testified to involve MC and her interactions with the Tenants. The Tenants testified that they have no issues with any of the other occupants in the building. I find that the evidence presented in this hearing fails to establish that the Tenants have significantly interfered with or unreasonably disturbed another occupant or the Landlord of the rental property. While I accept that the Tenants and MC have had heated exchanges and personality conflicts, I find that the Landlord has failed to establish that the Tenants have seriously jeopardized the health or safety or a lawful right or interest of the Landlord or another occupant in the building.

As I do not find cause to end this tenancy on a balance of probabilities, the Landlord's One Month Notice is cancelled, and the tenancy shall continue until it is ended in accordance with the Act.

Conclusion

The Tenants' application to cancel the One Month Notice is granted.

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

Dated: October 25, 2021

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Residential Tenancy Branch