



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: CNL, CNC, AAT, OLC  
For the landlord: OPC, OPL, FF

### **Introduction**

This hearing was convened as the result of the cross-applications of the parties for dispute resolution seeking remedy under the Residential Tenancy Act (Act).

The tenant applied for the following:

- an order cancelling the One Month Notice to End Tenancy for Cause (One Month Notice) issued by the landlord;
- an order cancelling the Two Month Notice to End Tenancy for Landlord's Use of Property (Two Month Notice) issued by the landlord;
- an order requiring the landlord to allow access to the rental unit for the tenant and his guests; and
- an order requiring the landlord to comply with the Act, regulations, or tenancy agreement.

The landlord applied for the following:

- an order of possession of the rental unit pursuant to a One Month Notice issued to the tenant;
- an order of possession of the rental unit pursuant to a Two Month Notice issued to the tenant; and
- to recover the cost of the filing fee.

The tenant, the tenant's legal counsel, tenant's legal advocate, and the landlord, attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process.

The parties were informed at the start of the hearing that recording of the dispute resolution hearing is prohibited under the Residential Tenancy Branch (RTB) Rules of Procedure (Rules) Rule 6.11. The parties were also informed that if any recording devices were being used, they were directed to immediately cease the recording of the hearing. In addition, both parties affirmed they were not recording the hearing. The parties did not have any questions about my direction pursuant to RTB Rule 6.11.

Both parties confirmed receiving the other's evidence in advance of the hearing, presenting no objection to the same. I find the tenant's and the landlord's evidence sufficiently served, in accordance with the Act.

Thereafter all parties were provided the opportunity to present their evidence orally, refer to relevant evidence submitted prior to the hearing, respond to the other's evidence, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the Rules. However, not all details of the parties' respective submissions and or arguments are reproduced here; further, only the evidence specifically referenced by the parties and relevant to the issues and findings in this matter are described in this Decision.

#### Preliminary and Procedural Matters-

Rule 2.3 of the Rules authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance the tenant indicated several matters of dispute on the application, the most urgent of which is the application seeking cancellation of the One Month Notice and the Two Month Notice (collectively, the Notices). I find that not all the claims on the application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the tenant's request to cancel the Notices and the landlord's application. The balance of the tenant's application is dismissed, with leave to re-apply.

Leave to reapply is not an extension of any applicable time limit.

Words utilizing the singular shall also include the plural and vice versa where the context requires.

Issue(s) to be Decided

Has the landlord submitted sufficient evidence to support either the One Month Notice or the Two Month Notice?

Is the landlord entitled to an order of possession of the rental unit and to recover the cost of the filing fee?

Background and Evidence

The undisputed evidence is that the tenant's tenancy in the rental unit began on March 1, 2019, for a monthly rent of \$750. The rental unit is the upper suite of a two unit home. The landlord resides in the lower suite.

The evidence showed that the landlord purchased the residential property from the tenant's original landlord, signing a purchase and sale contract on April 19, 2021. The landlord submitted evidence that he took possession on May 12, 2021, and that he moved into the lower suite on May 19, 2021.

Filed into evidence was a copy of the most recent written tenancy agreement, between the tenant and the original landlord. The tenancy agreement was signed on April 19, 2021, and was for a fixed-term through April 30, 2022.

The subjects of this dispute are the Two Month Notice and the One Month Notice.

The Two Month Notice in this case, was dated May 24, 2021, with a listed end of tenancy date of July 31, 2021. The tenant confirmed receiving the Two Month Notice on May 25, 2021, by personal service from the landlord.

The reason indicated on the Notice is that the rental unit will be occupied by the landlord or the landlord's spouse. Filed into evidence was a copy of the Notice.

The landlord also served the tenant a One Month Notice, dated June 5, 2021, with a listed end of tenancy date of July 31, 2021. The tenant confirmed that receiving the

One Month Notice on June 4, 2021, when it was found attached to the tenant's door. Filed into evidence was a copy of the Notice.

It is noted that the tenant's application in dispute of the Notices was filed on June 7, 2021, within the deadlines required by the Act to dispute each of the Notices.

Pursuant to Rule 7.18, the landlord proceeded first in the hearing to give evidence to support the Notice.

#### Two Month Notice –

In support of the Two Month Notice, the landlord said that he required more space than the one-bedroom lower suite which he currently occupies, as they have a six-year old son.

The landlord submitted that he understood there was a fixed-term tenancy agreement in place with the tenant when negotiating the purchase of the residential property, but thought the agreement was already in place for some time. The landlord submitted that he assumed the fixed-term would be ending in a month or two after taking possession.

The landlord submitted that he sent text messages to his realtor asking to get a copy of the written tenancy agreement in place, but one was not forthcoming. Filed in evidence were copies of the text messages.

The landlord submitted he offered to swap his lower unit with the tenant's upper unit, for the same monthly rent, and the tenant declined.

The landlord said he discovered the tenant was using the outside storage areas upon taking possession. The tenant refused to remove her personal property from the storage areas outside of the home upon request of the landlord, so he served the tenant with the Two Month Notice.

#### One Month Notice –

The causes listed on the Notice alleged that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, has put the landlord's property at significant risk, and

has breached a material term of the tenancy agreement that was not corrected within a reasonable time after the landlord gives written notice to do so.

In the Details of Causes portion of the Notice, the landlord wrote a narrative about his first encounter with the tenant upon moving into the rental unit on May 19, 2021. Among other details, the landlord wrote that the tenant informed him of a mold issue in the back storage area. The landlord asked if she would remove her personal property so that he could deal with the mold issue and put his own personal property in the storage area. The landlord further wrote, among other things, that he asked the tenant to relocate the camera that had been invading his personal space.

Upon inquiry as to the merits of the third cause listed on the Notice, the landlord asked what a material term was. The landlord was unable to point me to the material term of the tenancy agreement to which this cause referred.

As to the first and second causes listed on the Notice, the landlord submitted he gave the tenant two weeks to remove her belongings from the two outside storage areas. The landlord said that he had no other storage areas for himself. According to the landlord, he gave the tenant a written 10 day notice to remove her belongings.

The landlord described the storage area as underground area, outdoors, and another outdoor “cubby” type of storage.

The landlord wrote that his belongings were at risk, due to the tenant’s failure to remove her belongings from the storage area.

The landlord confirmed that he now has use of the storage area, as the tenant has removed her belongings.

As to the camera issue, the landlord submitted that the tenant had a security camera pointed to their entrance, invading their privacy. The landlord submitted that the tenant also has other cameras pointing to their outdoor space, taking away their privacy. The landlord submitted that his six-year old son is afraid to go in the yard because of the invasion of his privacy.

The landlord submitted that he and his family felt extremely uncomfortable due to the cameras pointing at them.

The landlord confirmed that the camera pointing at their entrance is now repositioned and he has put birdhouses in front of two other cameras. The landlord submitted that there was one another camera that remained a problem.

The landlord also submitted that the cameras really belong to him, as they were fixtures and transferred to him when he purchased the residential property, and the tenant has refused to give him the cameras.

Although not mentioned in the Details of Causes section on the Notice, the landlord also raised the issue about a tent-like structure the tenant has placed on the concrete balcony of her rental unit. The landlord submitted that the balcony was crumbling and was dangerous, but the tenant refuses to remove her belongings.

The landlord's relevant evidence included photographs, communications, and videos.

#### Tenant's response –

The tenant submitted that she has had exclusive use of the outdoor storage areas since her tenancy began, at the approval and permission of the original landlord. The original landlord even helped her move her personal property into the storage units and built shelves for the tenant's use in the storage areas. Despite this, she has removed her personal property from the storage areas.

The tenant submitted that she owns the cameras and they were installed with the original landlord's permission and approval for security purposes, after several break-ins. The tenant submitted that the cameras were not included with the purchase of the home and do not belong to the landlord.

The tenant submitted that there is one camera remaining that is pointed to the shared walkway with the neighbour, with the neighbour's approval. The tenant said that she has stored plants on the neighbour's side of the walkway, as she is in the process of selling them to make extra income. The tenant submitted she cannot afford to have her plants stolen.

The tenant submitted that the balcony is in the same condition as it always has been, and there are no safety concerns. The tenant said she has only put her personal property on the balcony, as she lost her storage area and is in the process of downsizing her belongings. Apart from that, according to the tenant, she has and still

uses the balcony as she always has, with the balcony withstanding her weight gained during her period of disability.

### Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

#### **Tenant's application –**

##### Two Month Notice –

Section 49 (3) of the Act states that a landlord who is an individual 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.

When a tenant disputes a Two Month Notice to end tenancy, the landlord has the burden to prove that not only do they intend to use the rental unit for the stated purpose, but also that the Notice was given in good faith. The burden of proof is based on the balance of probabilities, meaning the events as described by one party are more likely than not.

Residential Tenancy Policy Guideline 2 provides good faith means a landlord is acting honestly, and they intend to do what they say they are going to do. It means they do not intend to defraud or deceive the tenant, they do not have an ulterior purpose for ending the tenancy, and they are not trying to avoid their obligations under the Act.

Upon review of the Two Month Notice to End Tenancy issued dated May 24, 2021, I find that Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 88(a) of the Act.

After hearing from the landlord, I find that the landlord had an ulterior motive in issuing the Notice seeking the end of the tenancy. The landlord himself testified that he issued the Two Month Notice to the tenant because she did remove her personal property from the storage area. I find this statement alone shows retaliation against the tenant and therefore, I find the Notice was not issued in good faith and that the landlord had an ulterior purpose.

Due to the above reasons, I find that the landlord has provided insufficient evidence to prove the reason listed on the Two Month Notice.

As a result, I find the landlord's Two Month Notice, dated May 25, 2021, for an effective move out date of July 31, 2021, is not valid and not supported by the evidence, and therefore has no force and effect.

I ORDER that the Two Month Notice is cancelled, with the effect that the tenancy will continue until ended in accordance with the Act, pending consideration of the One Month Notice.

#### One Month Notice –

Section 47 of the Act permits a landlord to seek termination of a tenancy by issuing a One Month Notice for a variety of causes. In this case, the landlord alleged that the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord, that the tenant put the landlord's property at significant risk, and the tenant has breached a material term of the tenancy that was not corrected within a reasonable time.

Upon review of the One Month Notice to End Tenancy dated June 5, 2021, I find that Notice to be completed in accordance with the requirements of section 52 of the Act and I find that it was served upon the tenant in a manner that complies with section 88(g) of the Act.

In this case, the landlord was unclear what constituted a material term. I therefore find the landlord submitted insufficient evidence to support this cause.

As to the remaining two causes, at the hearing and on the One Month Notice, the landlord raised an issue about the tenant storing her personal property in the outside storage area and having cameras pointing at the landlord's entrance and yard.

While for the most part, these issues have been resolved, I must consider whether on the day the One Month Notice was issued, the landlord had sufficient cause to end the tenancy.

In considering the relevant oral, documentary, and digital evidence, I find he did not.



I find the evidence leads me to conclude that the landlord became unhappy when he discovered the tenant had a fixed-term tenancy through April 30, 2022, realizing he would be unable to move into the main suite until then, and made two attempts to evict the tenant within 2.5 weeks of moving into the lower suite. The first Notice was issued to the tenant less than one week after the landlord moved into the lower suite.

In considering whether the landlord had sufficient cause, I must consider the two issues raised, the storage area and the security cameras.

I find the evidence supports that the tenant had use of the storage area for the entire two + years of her tenancy prior to the landlord purchasing and taking possession of the residential property. The tenant was clear, consistent and detailed in her affirmed testimony, especially when speaking about the shelves, and I find the landlord's testimony and evidence to be self-serving.

This leads me to conclude that the landlord would have been prohibited from mandating that the tenant remove her personal property from the storage area, had that still been an issue before me at the hearing.

I base this conclusion on the legal doctrine of estoppel. Where one party, by act or words, gives the other party reason to believe that a certain set of facts upon which the other party takes action, the first party, the landlord here, cannot later, to their benefit, deny those facts or say that their earlier act was improper. The rationale behind estoppel is to prevent injustice owing to inconsistency. In this case, I find the evidence clear that the original landlord approved the tenant using the storage area and as the landlord here assumed the tenancy as is when he purchased the residential property, I find he is prevented from seeking use of the storage area.

As to the issue of the cameras, in reviewing the landlord's documentary evidence, I find the landlord has provided contradictory evidence, or more specifically the text messages between his real estate agent and himself. In a text message of April 17, 2021, the landlord's real estate agent informed the landlord that the tenant owned the cameras. The landlord testified, however, that the cameras were fixtures and that they became his property when he purchased the residential property. Due to this contradictory evidence, I find the landlord's evidence lacked credibility and was therefore, unreliable.

As I have found the landlord's evidence unreliable, I find the tenant's evidence supports that she purchased and installed the cameras for her own use and security during the tenancy with the approval and consent of the original landlord.

This leads me to conclude that the landlord would have been prohibited from mandating that the tenant remove cameras, had that still been an issue before me at the hearing. I also make this finding on the basis of estoppel.

I therefore have found that the tenant or a person permitted on the property by the tenant has not significantly interfered with or unreasonably disturbed another occupant or the landlord or that the tenant put the landlord's property at significant risk.

For these reasons, I find the landlord has submitted insufficient evidence to support any cause listed on the Notice.

As a result, I find the landlord's One Month Notice, dated June 25, 2021, for an effective move out date of July 31, 2021, is not valid and not supported by the evidence, and therefore has no force and effect.

I ORDER that the One Month Notice is cancelled, with the effect that the tenancy will continue until ended in accordance with the Act.

As I have ordered the landlord's Two Month Notice, dated May 24, 2021, and the One Month Notice, dated June 5, 2021, cancelled, the tenant's application is granted.

The tenancy continues until it otherwise ends under the Act.

### **Cautions to the landlord –**

#### **#1.**

After hearing from the landlord and considering the evidence, I find it necessary to issue cautions to the landlord. I find what the evidence shows me is that the landlord is not familiar with their obligations under the Act.

Residential Tenancy Branch Policy Guideline 6 states that a breach of a tenant's right to quiet enjoyment can occur with frequent and ongoing interference by the landlord. The repeated issuance of invalid and unsubstantiated Notices to the tenant could be

construed as such a breach of the tenant's rights, for which the tenant could seek compensation.

I therefore inform the landlord that further attempts to end the tenancy for unlawful reasons or in bad faith may constitute harassment which could form a claim by the tenant for compensation for loss of quiet enjoyment and devaluation of the tenancy. Further, this Decision may form a part of the record for consideration by another arbitrator in future dispute resolution matters, should this occur.

A tenant is entitled to enjoy their home, free from the worry of further, unfounded eviction notices.

## **#2.**

The landlord has required the tenant to remove her personal property from the storage areas she used during her tenancy, but now objects to the tenant using her own space to store her personal property. For this reason, I find the landlord has unreasonable expectations of this tenant, which shows the landlord has acted in a heavy handed manner in dealings with the tenant.

The landlord presented at the hearing that the balcony attached to the rental unit is unsafe. If the balcony is unsafe, I find the landlord presented insufficient evidence that the condition was due to the use by the tenant.

Further, the landlord was informed that it is the landlord's legal responsibility under the Act to maintain the residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law.

The landlord is cautioned to review his obligations under the Act.

## **#3.**

In the landlord's evidence was a notice of inspection issued to the tenant. While the landlord is entitled to inspect the rental unit under certain conditions, the landlord's notice must contain, among other things, the date and **time** of entry, not a **range of time** as given in this particular written notice.

[emphasis added]

For clarity, the landlord is encouraged to review section 29 of the Act.

**Landlord's application –**

As I have cancelled the Notices at issue in this dispute, I dismiss the landlord's application seeking an order of possession of the rental unit based upon those Notices, without leave to reapply, due to insufficient and contradictory evidence.

As a result, I dismiss the landlord's request to recover the filing fee.

Conclusion

The tenant was successful with her application and the Two Month Notice and the One Month Notice are cancelled and are no force or effect.

The balance of the tenant's application not dealing with the Notices is dismissed, with leave to re-apply.

The landlord's application is dismissed, without leave to reapply.

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: October 6, 2021

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Residential Tenancy Branch