



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

### **Dispute Codes**

For the tenant: CNC  
For the landlord: OPC, FFL

### **Introduction**

The tenant filed an Application for Dispute Resolution on June 19, 2021 seeking an order to cancel the One Month Notice to End Tenancy for Cause (the “One-Month Notice”). Their landlord issued this One-Month Notice on June 17, 2021. b

The landlord filed a cross-Application for Dispute Resolution on July 2, 2021 seeking an order of possession of the rental unit. The also applied for reimbursement of the Application filing fee.

The matter proceeded by way of a hearing pursuant to section 74(2) of the *Residential Tenancy Act* (the “Act”) on October 22, 2021. In the conference call hearing I explained the process and offered each party the opportunity to ask questions.

Both parties attended the hearing, and each was provided the opportunity to present oral testimony and make submissions during the hearing. Both parties confirmed receipt of the evidence prepared by the other. On this basis, the hearing proceeded.

### **Issues to be Decided**

Is the tenant entitled to an order to cancel the One-Month Notice, pursuant to s. 47 of the *Act*?

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

Is the landlord entitled to reimbursement of the Application filing fee, pursuant to s. 72 of the *Act*?

### Background and Evidence

The landlord presented a copy of the tenancy agreement. The tenancy began on July 23, 2010.

The landlord stated they have only been managing the property for about one year. They were not fully aware of the history; however, they described the more recent claims of other tenants about the tenant here not respecting property and “hanging around courtyards, destroying the place.” Another resident in the property made a claim about this to the Residential Tenancy Branch. Earlier in 2021, this resulted in the Residential Tenancy Branch order that the landlord give a letter to all property residents that noted there have been complaints, and that the landlord has “zero tolerance for violence or threats of any nature from any tenants, their family members, or their guests.” The landlord described how it was the younger members of the tenant’s family that were cause for concern.

That notice to all property residents is in the form of a memorandum, and the copy provided by the landlord here is dated May 12, 2021. This asks all residents to be mindful of “childcare responsibilities”, this because of incidents where “children have threatened adults, made inappropriate and threatening gestures, and have threatened adults with bodily harm.” Further: “an eviction notice will be issued if specific complaints are received from this point forward.”

The tenant acknowledged they received this notice. In the hearing the landlord clarified this notice went out on May 17, and again on June 17.

On June 16, other property residents complained to the landlord of a fight involving the tenant’s family. The accusation put to the landlord was that the tenant’s family member started the fight and injured another tenant on the day prior. The landlord did not speak to the tenant or their family member individually before serving the One-Month Notice on June 17.

That One-Month Notice, provided by the landlord here, has the landlord's indication that the tenant "seriously jeopardized the health or safety or lawful right of another occupant or the landlord." The details are: "Tenants multiple family members attached another tenant in the courtyard. . . Police had attended the scene. . . We would like this family to leave peacefully as all tenants around our building are currently feeling unsafe including the management."

The landlord submitted two brief security videos showing the details of the fight. This shows the tenant's family member throwing the first punch, then holding a jumping rope to use as a weapon. This caused a skirmish involving several people. The recipient of the tenant's blow fell to the ground. The continuing second video shows the recipient wielding some sort of stick and pursuing another person present at the scene.

The tenant provided a written statement when they submitted their Application. They presented their tenancy has lasted 11 years; they never caused trouble in that time. On the altercation, they were defending themselves because "the other party became physical first." This was after the other particular resident would confront them about their children, with "multiple racial abuses from [their] children . . . racial slurs, compare us to animals and constantly disrespect us."

According to the tenant, this incident arose because of the other resident's confrontation over allegations of the tenant's child hitting their own. This escalated where the tenant's spouse approached us to discuss the incident and the allegation, with the tenant's spouse eventually reacting in self-defense after being pushed. The tenant's spouse was holding a jump rope at the time; it was not procured for the purpose of using it as a weapon.

After the incident, a police officer arrived and asked questions. The officer "concluded that no one was in trouble and suggested everyone keep in their courtyards and then they shortly left." Other witnesses to the incident told the officers that the other resident fell down and was not pushed.

In the hearing, the tenant told of their past interactions with this other resident. At the end of the hearing, the tenant presented that the other resident lives in an adjacent building that does not share the same courtyard space, at an adjacent address. This means the other resident travels out of their way to approach the tenant and their family. This is a repeated pattern.

#### Analysis

The *Act* s. 47 sets out the reasons for which a landlord may give a One-Month Notice. This includes the reason indicated on that document that the landlord issued to the tenant here.

In this matter, the onus is on the landlord to prove they have cause to end the tenancy. The landlord provided evidence related to this matter and spoke to the reasons in oral testimony. On my evaluation of this evidence, and with consideration to the submissions of the tenant here, I find the One-Month Notice is not valid.

On the document itself, the landlord lists the infractions of “tenants multiple family members attacked another tenant in the courtyard.” The chief evidence for this is the video; however, on my review I find this is not what the video depicts. There is a skirmish in which several people intervene, with the primary conflict being between the tenant’s spouse and the other resident. Though several people are active in the video, this is not more than one family member involved, and certainly not more than one person attacking the other resident.

I find the tenant’s spouse here did not arrive to the scene with the intention to assault the other resident or any other person. They are carrying a jump rope; however, based on the testimony I find this was not brandished as a weapon with the intent to use it for that purpose. Conversely, the other resident did pick up some stick-like object which I view as having the purpose for use as a means of delivering blows to a separate family member of the tenant, not the tenant’s spouse.

The police attended because of the incident. I accept the tenant’s other family member was present, and their statements on the officers’ determination on the matter is direct testimony on what they saw and heard when they were there. While the police obviously did not review the video, I find they made the assessment that the other resident fell down and this was not the action exclusively of the tenant’s spouse here.

The testimony of the tenant and their family members in the hearing makes me question whether they were the exclusive source of the problems that led the landlord to issue the earlier memo to all residents. That link is not clearly established by the landlord here. Further, the reason for the memo itself – to show that other residents are feeling unsafe – cannot form the basis as one reason for issuing the One-Month Notice, minus any evidence showing an accumulation of events. That evidence is not present, leaving the reason for the One-Month Notice being exclusively the incident on June 15.

The landlord did not present a history of incidents that accumulated over some period of time, toward their issuance of the One-Month Notice. Into this consideration I also weigh the long term of this tenancy. There is no evidence beyond this single incident in that 11-year period of the tenancy. Factoring in that important consideration, I find this single incident does not warrant the issuance of the Two-Month Notice here.

On these points, I find the tenant's testimony shows they do not pose a serious jeopardy to the health or safety of other occupants. I order the One-Month Notice cancelled, and the tenancy shall continue.

Because they are not successful in this hearing, the landlord is not entitled to compensation for their Application filing fee.

\

#### Conclusion

For the reasons outlined above, I order the One-Month Notice issued on June 17, 2021 is cancelled and the tenancy remains in full force and effect. The landlord's cross-Application for an Order of Possession is dismissed without leave to re-apply.

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: October 25, 2021

---

Residential Tenancy Branch