



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, LRE, OLC, FFT

### Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on July 19, 2021 (the “Application”). The Tenant applied as follows:

- To dispute a One Month Notice to End Tenancy for Cause dated July 18, 2021 (the “Notice”)
- To suspend or set conditions on the Landlord's right to enter the rental unit
- For an order that the Landlord comply with the Act, regulation and/or the tenancy agreement
- To recover the filing fee

The Tenant appeared at the hearing. S.M. and D.W. (the “Agents”) appeared as agents for the Landlord. I explained the hearing process to the parties. I told the parties they were not allowed to record the hearing pursuant to the Rules of Procedure (the “Rules”). The parties provided affirmed testimony.

Pursuant to rule 2.3 of the Rules, I told the Tenant at the outset of the hearing that I would consider the dispute of the Notice and request to recover the filing fee and dismiss the remaining requests as they are not sufficiently related to the dispute of the Notice. The requests to suspend or set conditions on the Landlord's right to enter the rental unit and for an order that the Landlord comply with the Act, regulation and/or the tenancy agreement are dismissed with leave to re-apply. This decision does not extend any time limits set out in the *Residential Tenancy Act* (the “Act”).

Both parties submitted evidence prior to the hearing. I confirmed service of the hearing package and evidence and no issues arose.

The parties were given an opportunity to present relevant evidence and make relevant submissions. I have considered the documentary evidence submitted and all oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

### Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, should the Landlord be issued an Order of Possession?
3. Is the Tenant entitled to recover the filing fee?

### Background and Evidence

A written tenancy agreement was submitted as evidence and the parties agreed it is accurate. The tenancy started June 01, 2020 and is a month-to-month tenancy. Rent is \$850.00 due by the first day of each month. The Tenant paid a \$425.00 security deposit.

### ***Preliminary Issue – Jurisdiction***

At the outset of the hearing, given some of the comments in the documentary evidence submitted, I asked the parties if they agree the tenancy is a tenancy governed by the *Act* and that the RTB has jurisdiction to decide this matter. Both parties agreed the tenancy is a tenancy governed by the *Act* and that the RTB has jurisdiction to decide this matter.

I read out section 4(c) of the *Act* which states:

4 This Act does not apply to...

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation...

I asked the parties if section 4(c) of the *Act* applies in this matter.

The Agents testified as follows. The entrance to the building goes through the kitchen. The Landlord does use the kitchen. The Landlord lives at a different address. When the Landlord is at the building, the Landlord uses the kitchen to make lunch. The kitchen is also used for events or functions in the building. The Landlord previously used the kitchen at least once a week; however, has not done so recently given the pandemic and behaviour of the Tenant and another resident.

The Tenant testified as follows. The Landlord does not use the kitchen at all. The Tenant is aware from a previous tenant that the Landlord used the kitchen once in 2017 and has not done so since. The kitchen is not used for events or functions.

### ***Notice***

The Notice was submitted as evidence. The grounds for the Notice are:

1. Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord.
2. Tenant or a person permitted on the property by the Tenant has put the Landlord's property at significant risk.

The parties agreed the Notice was served, and received by the Tenant, July 18, 2021.

The Agents' position in relation to the grounds for the Notice is as follows.

The Tenant has breached the tenancy agreement in relation to use of the kitchen. The Tenant has not allowed the Landlord or their agents to enter the kitchen which is a common area. The Tenant has significantly interfered with the Landlord. The Landlord is relying on photos, the layout of the kitchen and the letter sent to the Tenant September 13, 2021 in evidence.

The Tenant painted the inside of six windows in their room without the consent of the Landlord. The Tenant complied with the Landlord's request to remove the paint. There is no visible damage to the windows; however, the Landlord is going to have a window repair person attend to determine whether the UV coating has been affected. Further, the painting will have voided the warranty for the windows.

The Tenant hit or moved a security camera in the kitchen with a pole or broom which damaged the camera.

The Tenant's position in relation to the grounds for the Notice is as follows.

The Tenant has not denied access to the kitchen or stopped the Landlord or their agents from using the kitchen. The Landlord and their agents come into the kitchen freely and were in the kitchen the day prior to the hearing. The Tenant is relying on photos in evidence of the Landlord or their agents in the kitchen October 17, 2021.

The Tenant painted the windows in their room July 21, 2020 to reduce the temperature in the room. The Tenant did not receive any notice from the Landlord that the painting was an issue until July 18, 2021 when an issue arose between the parties about security cameras. The Landlord did send a letter asking the Tenant to remove the paint and the Tenant did so by the deadline in the letter. The paint was removed with vinegar and water. There is no damage to the windows.

The Tenant moved the security camera in the kitchen one time in December of 2020 and this did not cause damage to the security camera.

In reply, the Agents said it was possibly the summer of 2020 when the Tenant painted the windows in their room. The Agents did not know when the painting issue was first raised with the Tenant. The Agents said the Tenant moved the security camera once, and maybe twice, and agreed this occurred in December of 2020. The Agents said the Notice was not issued until July of 2021 because this is when they had a confrontation with the Tenant about the security cameras.

I have reviewed the documentary evidence of both parties and will refer to it below as necessary.

### Analysis

#### ***Preliminary Issue – Jurisdiction***

I am satisfied that the parties have a tenancy agreement covered by the *Act* and that the RTB has jurisdiction in this matter. Neither party disputed that the parties have a tenancy agreement covered by the *Act* and that the RTB has jurisdiction in this matter.

The Agents did take the position that section 4 of the *Act* applies in this matter. Again, section 4 of the *Act* states:

4 This Act does not apply to

(c) living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation...

I am not satisfied section 4 of the *Act* applies in this matter for the following reasons. The Landlord does not live at the same building as the Tenant. The Landlord has not used the kitchen at the building recently. The parties gave conflicting testimony about whether the Landlord has used the kitchen since 2017. I do not find that there is compelling evidence before me showing the Landlord has used the kitchen on any regular basis since 2017. I acknowledge that there is documentary evidence referring to the kitchen as common space; however, I am not satisfied based on the documentary evidence that the Landlord in fact uses the kitchen for their own purposes on any regular basis.

### ***Notice***

The Notice was issued pursuant to section 47 of the *Act* and the following subsections:

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) put the landlord's property at **significant** risk...

(emphasis added)

The Tenant had 10 days from receiving the Notice to dispute it pursuant to section 47(4) of the *Act*. There is no issue that the Tenant received the Notice July 18, 2021. The Application was filed July 19, 2021, within time.

The Landlord has the onus to prove the grounds for the Notice pursuant to rule 6.6 of the Rules. The standard of proof is on a balance of probabilities meaning it is more likely than not the facts occurred as claimed.

When one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on the terms “significantly” and “unreasonably” in section 47(1)(d) of the Act, I find that the circumstances that entitle a landlord to end a tenancy pursuant to this section must be serious.

The Landlord has relied on three issues as the basis for the Notice including the Tenant denying the Landlord or their agents access to, and use of, the kitchen, the Tenant painting six windows in their room and the Tenant hitting or moving a security camera causing damage to the camera.

In relation to the kitchen issue, the parties provided conflicting testimony about whether the Tenant has denied the Landlord or their agents access to, or use of, the kitchen. Therefore, I have considered the documentary evidence before me to support each party's position. The Tenant submitted photos of the Landlord or their agents in the kitchen moving appliances which supports that the Landlord or their agents have access to the kitchen. The Landlord has not submitted any documentary evidence, other than the Notice, to support their position that the Tenant has denied the Landlord or their agents access to, or use of, the kitchen. Given the conflicting testimony, and lack of further evidence to support the Landlord's position, I am not satisfied the Tenant has denied the Landlord or their agents access to, or use of, the kitchen.

In relation to the Tenant painting six windows in their room, I am satisfied the Tenant did this because the parties agreed on this. I accept the Tenant's testimony that they painted the windows in July of 2020 because the Tenant submitted a photo of their alarm clock with the month, day and temperature showing which tends to support their testimony. Further, I accept the Tenant's testimony about when they painted the windows because the Agents did not seem to know when this occurred and acknowledged it could have been in the summer of 2020. I also accept the testimony of the Tenant that the Landlord did not raise an issue with the windows being painted until July 18, 2021. The Agents did not dispute the Tenant's testimony about when the Landlord raised an issue with the windows being painted as they did not know when this

occurred. The documentary evidence shows that the Landlord wrote the Tenant a letter about the painted windows September 13, 2021, after the Notice was issued. There is no documentary evidence showing the Landlord raised the painted windows issue with the Tenant prior to issuing the Notice.

I do not find the issue of the Tenant painting their windows serious enough to warrant ending the tenancy for three reasons. First, the Landlord waited one year to raise the painted windows issue with the Tenant which suggests that this was not a serious issue for the Landlord. Second, the Tenant complied with the Landlord's request to remove the paint. Third, there is insufficient evidence of damage to the windows. The Agents acknowledged there is no visible damage to the windows. The Tenant denied the paint caused damage to the windows. There is no documentary evidence before me showing there is damage to the windows. Possible damage to the UV coating on the windows is simply speculative at this point given the Landlord has not confirmed damage with a window repair person.

In relation to the security camera, I accept that the Tenant moved the security camera one time in December of 2020. I do not accept that the Tenant touched the security camera more than once because the Agents were not sure of this.

The parties gave conflicting testimony about whether the Tenant damaged the security camera and therefore I have considered the documentary evidence before me to support each party's position. The Notice states that the Tenant has "potentially" damaged a security camera which suggests that the Landlord did not know if the camera was damaged when the Notice was issued. The Notice states that the Tenant "repeatedly" moved the camera which conflicts with the Agents' testimony that the Tenant moved the camera once and possibly twice. Even if the Tenant moved the camera twice, this is not repeatedly. The Tenant submitted photos of the camera which do not show any physical damage. The Landlord submitted the September 13, 2021 letter to the Tenant which states that the Tenant damaged the camera; however, I do not rely on this letter as corroborative evidence of the Agents' testimony because I cannot tell who it is from and therefore do not know if it is from one of the Agents or someone else. There is no further compelling documentary evidence about damage to the camera. In the circumstances, I am not satisfied the Tenant damaged the camera.

Given I am only satisfied the Tenant moved the camera once in December of 2020, more than six months prior to the Notice being issued, and am not satisfied the Tenant

damaged the camera, I do not find this issue serious enough to warrant ending the tenancy.

Given the above, I am not satisfied the Landlord has proven the grounds for the Notice. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

Given the Tenant was successful in the Application, I award the Tenant reimbursement for the \$100.00 filing fee pursuant to section 72(1) of the *Act*. Pursuant to section 72(2) of the *Act*, the Tenant can deduct \$100.00 from their next rent payment as reimbursement for the filing fee.

### Conclusion

The Application is granted. The Notice is cancelled. The tenancy will continue until ended in accordance with the *Act*.

The Tenant can deduct \$100.00 from their next rent payment as reimbursement for the filing fee.

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: November 19, 2021

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Residential Tenancy Branch