



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, OLC, MNDCT, RP, PSF, RR, LRE, LAT, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for:

- cancellation of a One Month Notice to End Tenancy for Cause dated July 14, 2021 ("One Month Notice");
- an Order for the Landlord to Comply with the Act or tenancy agreement;
- a Monetary Order of \$18,560.00 for damage or compensation under the Act;
- an Order for repairs to the unit, site or property, having contacted the landlord in writing to make repairs, but they have not been completed;
- an Order to provide services or facilities required by the tenancy agreement or law;
- an Order to reduce the rent by \$300.00 for repairs, services or facilities agreed upon but not provided;
- an Order suspending or restricting the Landlord's right to enter;
- authorization for the Tenant to change the lock; and
- recovery the \$100.00 cost of his Application filing fee.

The Tenants, M.G. and J.G. ("Advocate", son), and the Landlords, E.P. and A.P., appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about it. One witness for the Tenant, S.C. ("Witness"), was also present and provided affirmed testimony.

During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Tenant provided the Parties' email addresses in the Application and they confirmed these addresses in the hearing. They also confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

Early in the hearing, I advised the Parties that Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated a variety of different matters of dispute on the Application, the most urgent of which is the application to set aside two One Month 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 set aside the two One Month Notices, and the recovery of the filing fee at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply, depending on the outcome of this hearing.

I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing. I also advised them that they are not allowed to record the hearing and that anyone who was recording it was required to stop immediately.

Section 55 of the Act states that if a tenant's application to cancel an eviction notice is unsuccessful and is dismissed, and I am satisfied that the eviction notice complies with the requirements under section 52, I must grant the landlord an order of possession.

The onus to prove their case is on the person making the claim. In most circumstances this is the person making the application. However, in some situations the arbitrator may determine the onus of proof is on the other party. For example, the landlord must prove the reason they wish to end the tenancy when the tenant applies to cancel a Notice to End Tenancy.

### Issue(s) to be Decided

- Should the One Month Notices be cancelled or confirmed?
- Is the Landlord entitled to an order of possession?

- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

### Background and Evidence

The Parties agreed that the periodic tenancy began on December 1, 2019, with a monthly rent of \$2,300.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$1,150.00, and a \$500.00 pet damage deposit. The Landlord confirmed that she still holds the deposits in full.

The Landlord confirmed that she served the Tenant with a One Month Notice, which was signed and dated July 14, 2021, which has the rental unit address, and which was served by posting it on the rental unit door on July 14, 2021. The One Month Notice has an effective vacancy date of August 31, 2021, and it was served on the grounds 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. Another ground on the One Month Notice was that the Tenant breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord also served the Tenant with a second One Month Notice that was signed and dated October 25, 2021, it has the rental unit address, and it was served by posting it on the door on October 25, 2021. This One Month Notice has an effective vacancy date of November 30, 2021. The grounds for this eviction notice are the same as the last, that being: 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. Another ground on the One Month Notice was that the Tenant has breached of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so. This One Month Notice also had the ground that the Tenant has not done required repairs of damage to the unit/property; however, the Landlord did not address this claim.

### *Significantly Interfered with / Unreasonably Disturbed*

Given that she has the burden of proof in this matter, I asked the Landlord why I should confirm the One Month Notices, rather than cancelling them, as the Tenant has requested. The Landlord that the Tenant has never corrected what has been asked of him. The Landlord said that the Tenant uses marijuana and that the basement tenant moved out because of this ongoing interference. The Landlord referred me to a statement she had submitted from the previous tenant, A.Q., in the basement suite. A.Q. said in his statement:

Witness Testimony

From basement suite tenant, who was residing at [residential property address]  
from March 1, 2021 until October 18<sup>th</sup> 2021.

Dear [Landlord],

Now that I had moved out and feel safe to provide you with facts I encountered while renting basement suite. I would like to testify that since I moved into the basement suite in March 2021, I noticed strong marijuana smell coming from air ducts, leading from upstairs to the suite I was renting.

Being firefighter by occupation, I am prohibited by contract and my health from any unhealthy habits, such as marijuana use and smoking or drug use.

Consistent marijuana smell, coming from upstairs, had surely interfered with my right of quiet enjoyment and resulted in me, moving out earlier sadly.

[A.Q.]

Cell [number]

The Landlord also said that she asked the Tenant to stop insulting and harassing the Landlords. The Landlord directed my attention to a text she obtained from a prior tenant, who had received the text from the Tenant in the matter before me. In this text, the Tenant said: "So I got another notice from the crazy Russian landlords", which the Landlord said was racist.

The Landlord commented on her attempt to inspect the rental unit on July 20, 2021. She said that the Tenant denied her and her husband access to the suite. She said they had attached a notice of the inspection to the door of the rental unit, but the Tenant would not let her in. The Landlord said she called the police, and she provided the police case number.

The Advocate then commented on the Landlords having called the police. The Advocate said:

Re RCMP interactions – it was a race to the phone - we both called - and on occasions where she said she was prevented from entering the back yard. See our photo of her in the back yard. [The police] didn't even arrive.

[The Landlords] had already done an inspection within 30 days, and so they were not allowed to inspect again. They tried to force their way into the home. We called the RCMP and cited the relevant legislation, and the officer agreed, and he

escorted them off the property, as they were illegally trespassing - a home invasion.

The police have been called, but when [the Landlords] were refused access, it was for valid reasons. The second time they were refused access, it was because in the notice they gave a 12-hour window – that is not a reason for entering a home. 8:00 a.m. to 8:00 p.m. sometime isn't reasonable. She refused to acknowledge a 12-hour range is unreasonable.

The other thing is that this has been escalating. There is a complete lack of willingness to respect our right to quiet enjoyment. Literally, that until we put our foot down, we were seeing them sometimes every other day. There is a complete lack of respect of our right to privacy.

The other reasons we phoned the police was, in their attempt to break in, they twisted the handle. This has been an ongoing and escalating campaign. For months we tried talking nicely to them. We met them at [a coffee shop] and every time we pushed back, they doubled down.

The Tenant said:

I had a major health issue; I had to have my heart shocked with paddles. Mentally and physically, I was not in good shape and I told them to please stop harassing us. In terms of pejorative comments, that's given the way she treats me and the other tenant. She reads my comments and insults, but she is narcissistic, if not a sociopath.

The Landlord said:

They are providing false information - saying 'every second day'. Look at the addendum - we have an agreement. Once a week the yard.

There is a basement suite as well. There is a lot of maintenance to be done, according to the property, which is not interfering with direct request. The dishwasher, the central vacuum, the hot water temperature we had to change. So, the house has quite a few maintenance issues.

Our entry is lawful. The RCMP discussed the best way to proceed. This is false information. The yard is shared property - it's an expensive tree - I attend on a regular basis.

Re the handle – that's false. I have a key and he's been served proper notice, and for July 20 when he blocked entry, it was proper 24 hours notice for a follow-up inspection to the July 6 assessment. We were going to sell it. By letter I said the conditions in the suites was not sanitary.

On July 20, I came in with my husband to review the sanitary condition, but they blocked entry. I tried my key, but it didn't work. Why would I break the handle of my house?

The Landlord acknowledged that she would give the Tenant a long range in which she might attend the residential property for the inspection on a given day, such as between 8:00 a.m. and 8:00 p.m. or 9:00 a.m. to 5:00 p.m.

The Tenant said:

We don't smoke inside; we smoke on the back porch. The ducts have smelled musty since we moved in. Somehow, she is trying to blame us for the musty smelling ducts. We have photographic evidence of the door when [the Landlord] reefed on it. It works but you have to work at it. This is evidence of how unhinged they are.

The Landlord said: "This is not true. I used the key and then it did not work, and they were blocked, because I found they tied the chair for it. We sat on a bench and started phoning police."

The Tenant said that the entire interaction is on a video that he submitted. He said:

We phoned them ahead of time to say they couldn't come in. They started pushing quite hard, then went around the back.... There is no permanent damage, but it prevents the door from opening properly. [The Witness] can attest to that, because they tried to force their way into her home, too.

The Landlord said: "But after the July 20<sup>th</sup> incident, I stopped going then and notified that the yard was their job now."

The Witness was then asked to call into the hearing to testify. The following are the Advocate's questions for the Witness, and her answers.

[Witness], can you confirm that you have experience with the Landlords forcing their way into your residence?

Yes. Forcibly, they would enter or neglect my quiet enjoyment. Yes, I used to rent the suite below, and I was threatened twice by them trying to enter with their own key without my permission. I left because of the Landlords, because they were not reasonable.

I asked them to wear Covid masks, but they refused. I wouldn't let them in, because of my health. I left because I was afraid and bullied and intimidated and slandered and harassed.

When Covid started, they tried to increase the rent, but it was on a freeze. I refused to pay, and ever since then things got worse.

I have a video where they are trying to get in and my Dad was there trying to protect me. I asked my father to come up, because I was afraid of them. I was going to move out end of February, but it got so bad with them trying to get into my home. I didn't call the cops, because they're not dealing with that stuff.

They say they're mask exempt. Okay, I'll show the place via Zoom, but it was their way or no way.

I made a lot of phone calls to see if they were allowed in without masks. The place was big, but I have a compromised immune system, and my Dad is sick, and to visit my Dad, I couldn't be around anybody, and they jeopardized that. I told them I would move out at the end February, but I moved far earlier, because I was scared to stay there.

As far as the guys upstairs. We had issues, but we worked them out.

At any point in the tenancy did you feel unsafe or scared with our presence or conduct?

Of yours? No, I never felt threatened. Neither [the Landlord] or her husband are vaccinated.

I allowed the Landlord to ask the Witness questions.

How would you explain, [Witness], your ongoing complaints about the upstairs Tenant? See pages 23 – 26. Bringing drunk women which .... [The Witness] kept texting me for help because it was loud. So, it was an ongoing issue. The first incident page 23.

There was not women, there was one woman, and she was noisy. It was her that was the problem. She was drinking and would not be quiet. The sound proofing is not conducive to two suites. I could hear everything they said, and they could hear me.

First, that place needs to be redone. Because there's no privacy. Because of that, that is why there were disturbances, and eventually they did get her out.

[The Landlord] told me to tell her everything, and then she said go up and work it out myself - make up your mind - I'm not the landlord.

The Advocate said:

The person I had over - a woman - she has an issue with alcohol, and a couple times she had fallen down with a loud bang. I made sure she was not there in the evenings. We were able to amicably work out the concerns she had, but I also saw the escalating campaign of harassment to her, and when she moved out, they started that tact again with us.

I offered the Parties a last opportunity to testify, and these were their final statements. The burden of proof is with the Landlord; therefore, she went first, saying:

[The Tenant] breached on addendum and multiple items, yard care, marijuana use, interfering with guests, and with other tenants, with the neighbours. Page 25, 26 . . .are letters from neighbours. The most recent tenant moved out because of marijuana and intimidating texts.

The Witness has a separate matter she has to prove. The notices were served properly and the RCMP was called when we felt unsafe. I feel unsafe as a Landlord to enter the suite, given [the Tenant's] texts, and he damages the property, and neglecting us and painting us in a bad light.

The Landlords submitted letters they had received from neighbours about the Tenant's behaviour. These letters included:

Dear House Owner,

This is to notify you that your tenant [M.G.] guests at [rental unit address] had insulted our small children with foul language which put them in distress and caused fear of playing in their own yard. Our quiet enjoyment as neighbouring



house owners had been seriously disturbed by your tenant not only intimidating our children with foul language but lots of partying and them being naked in their yard.

We will highly appreciate if you can deal with your tenant in the manner so situation gets resolved.

Respectfully,

[L.N.]

[Cell number] .

[reproduced as written]

The Advocate and Tenant said:

The first time I visited the property from Victoria was in March 2020. I arrived for a visit with my father... During my two weeks there, the Landlords accessed the property numerous times ....

I ended up moving in with father when he and his wife separated. The Landlord's children helped me to unload my belongings from the moving truck, and she welcomed me . . . . I soon noticed their visits to the property and her frequent demands to enter the home. In a previous tenancy, it was more like two to three times per year that I interacted with the landlord. I have no parties, rarely have a guest. I'm a private person and they regularly drop by unannounced. When they're inside, they will take pictures of our belongings and personal items.

I was awoken when they barged in once, despite being told I was sleeping. They wanted to futz with the hinges of bedroom door. They have a total disregard for boundaries and tenant privacies.

It feels more like being a guest in her home . She lets us know that she owns it and can do whatever she wants.

We tried to have discussions with her about our right to privacy, she became belligerent, nasty, more notices appeared on the door. Regarding the use of cannabis in the property – she was made aware that we use it for major health reasons; however, it is exclusively used outside. Despite being allowed to smoke inside in our last place, I would smoke outside out of respect.

'Unconscionable:' section 6 (3) (b) of the Act says a term is unenforceable if it is

unconscionable. . . . Tenants are legally permitted to possess medical marijuana.

We the Tenants have made great effort to be respectful even in -40 degrees – we smoke outside. And it is stored in sealed air tight container.

My Dad has PTSD, heart issues, and a low tolerance for stress. He had a terrifying health scare and had to be shocked with the paddles.

Regarding unpleasant language, it is only the result of months of ongoing bullying and harassment. The evidence presented to me is that the Tenant is unpleasant to deal with, but not unreasonably disturbing or significantly interfering with - not to that level.

I have done hundreds of hours of research and there is no grounds to terminate the tenancy. Her grounds are taking legal medication and using bad words when harassed. This is not new territory – she did the same to [the Witness].

[The Landlord] has served us numerous pieces of paper – she has posted over 100 pieces of paper on our door in the last year. We have never experienced such egregious and unconscionable behaviour of the Landlord.

### *Breach of a Material Term*

In the tenancy agreement submitted by the Landlord, it states in the addendum at clause five: No marijuana usage or cultivation are allowed on the premises.”

The Landlord said that this is a material term of the tenancy agreement.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

I find on a balance of probabilities that the Landlords are going beyond their authorized rights under the Act in trying to inspect the rental unit too often. I find it more likely than not that it is this behaviour, which causes the Tenant to use foul and sometimes insulting language in his texts with and about the Landlords. While I caution the Tenant to try to behave more courteously with the Landlord for better landlord/tenant relations,

still, I find that the Landlords have not provided sufficient evidence to establish that this is a ground of eviction for the Tenant, as set out below.

Section 47 of the Act sets out the grounds on which a landlord may evict a tenant for cause.

**Landlord's notice: cause**

**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,

...

(h) the tenant

(i) has failed to comply with a material term, and

(ii) has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

...

When a landlord wishes to end a tenancy for cause under section 47 of the Act, the burden rests with the landlord to establish that they have cause to end the tenancy for the grounds stated on the notice to end the tenancy.

**Significantly Interfered with / Unreasonably Disturbed**

The Parties provided contradictory witness statements, in that the Landlord's written witness statement from A.Q. indicated that the Tenant's cannabis smoke was so disturbing that this basement tenant said he moved out, as a result. However, the Witness who testified at the hearing did not even mention this as a problem. Rather, she strongly expressed her frustration with the Landlords and that they were the reason she moved out.

The Landlord also submitted a statement from a neighbour who indicated that the Tenant used foul language around their children, such that the children are afraid to play in their own back yard. The neighbour did not indicate if this was a one-off behaviour on the Tenant's part, or if it occurred repeatedly.

Based on the evidence before me overall, I find that the Landlord has provided insufficient evidence to establish on a balance of probabilities that the Tenant significantly interfered with or unreasonably disturbed the Landlord or other tenants/occupants of the residential property. Accordingly, and pursuant to section 62 of the Act, I dismiss this claim without leave to reapply.

However, **I caution the Tenant** to continue smoking outside only, and to control his language and insults in dealing with the Landlord or the neighbour's children. He is equally responsible for building a strong tenant/landlord relationship.

### *Breach of a Material Term*

In terms of the Landlord's claim that the prohibition against the use of cannabis in the residential property is a material term in the tenancy agreement, I turn to RTB Policy Guideline #8, "Unconscionable and Material Terms".

### **Material Terms**

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

The question of whether or not a term is material is determined by the facts and circumstances surrounding the creation of the tenancy agreement in question. It is possible that the same term may be material in one agreement and not material in another. Simply because the parties have put in the agreement that one or more terms are material is not decisive. During a dispute resolution proceeding, the Residential Tenancy Branch will look at the true intention of the parties in determining whether or not the clause is material.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;

- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I find there is insufficient evidence before me that clause five of the Addendum regarding cannabis is a material term. No evidence was presented to me indicating that the Parties turned their minds to the importance of this clause when they signed the tenancy agreement, such that it became a “material term”. The Landlord did not direct me to any evidence that proves on a balance of probabilities that this is a material term.

Accordingly, I find that the Tenant has not breached a material term of the tenancy agreement, because there is insufficient evidence that it was a material term. As such, and pursuant to section 62 of the Act, I dismiss this claim without leave to reapply.

Given the above, I find that the One Month Notices are not valid and I cancel them, rendering them void and of no force or effect.

Given the Tenant’s success in this matter, I award him with recovery of the **\$100.00** Application filing fee, pursuant to section 72 of the Act. The Tenant is authorized to deduct \$100.00 from one upcoming rent payment in complete satisfaction of this award.

### Conclusion

The Tenant is successful in his Application for an Order cancelling the One Month Notices, as the Landlord provided insufficient evidence to support that the Tenant significantly interfered with or unreasonably disturbed the Landlord or other tenants/occupants. The Landlord also failed to provide sufficient evidence that the Tenant breached a material term of the tenancy agreement. As such, the One Month Notices are cancelled and are of no force or effect.

The Tenant's other claims are dismissed with leave to reapply.

The Tenant is awarded recovery of the **\$100.00** Application filing fee from the Landlord. The Tenant is authorized to deduct \$100.00 from one upcoming rent payment in complete satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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: November 22, 2021

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Residential Tenancy Branch