



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding LEGERS PROPERTIES INC.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Code: CNC

### Introduction

The tenant applied to dispute a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (“Act”).

Attending the arbitration hearing was the tenant, an agent for the landlord, and two witnesses for the landlord. No service issues were raised, the parties were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

### Issues

1. Is the tenant entitled to an order cancelling the Notice?
2. If not, is the landlord entitled to an order of possession?

### Background and Evidence

Relevant evidence, complying with the *Rules of Procedure*, was carefully considered in reaching this decision. Only relevant oral and documentary evidence needed to resolve the specific issues of this dispute, and to explain the decision, is reproduced below.

The landlord’s agent gave evidence that the Notice, a copy of which was in evidence, was served on the tenant because of the tenant’s behavior on July 10, 2021. The behavior involved a negative interaction between the tenant and another occupant of the building (S.). While the incident is fairly recent, the landlord testified that the occupant has made several reports of harassment from the tenant since April 2019.

Leading up to July 10, the landlord had given the tenant a couple of warning letters about his conduct. It was the landlord’s hope that the incidents were short-lived and would not continue or repeat.

On July 10, the tenant purportedly yelled “cuckoo” and other disparaging remarks and words at S. In addition, he allegedly yelled S.’s deceased son’s name. Later that day, the landlord’s agent and fellow witness (S.F.) observed the tenant yelling the deceased’s name from the nearby sea walk.

Submitted into evidence by the landlord was a short video recording taken by S. on July 10. There is also a time stamp accompanying the video. The 19-second-long video captures the tenant entering the building, saying, “Blair. B-B-B-Blair. B-B-B-Bullet,” and otherwise whistling.

On July 12 the tenant was given caution notices. The next day, the landlord and S.F. observed the tenant yelling from the sea walk. It was on July 19 that the landlord issued the Notice. Page two of the Notice indicated that the notice was being issued because the tenant “significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property, and because the tenant breached a material term of the tenancy agreement. Since issuing the Notice, the tenant’s behavior has not ceased.

The landlord’s witness, S., testified that there are “quite a few incidents” of the tenant allegedly making of her deceased son. She testified that the tenant would yell out the deceased’s name. Further, she explained that this behavior is unconscionable, very disturbing, and that she has been called a “loon” and a “lunatic.” When I asked the witness how often these incidents have occurred, she answered, “too often.”

The witness has to, she testified, close her windows so as not to hear him. In addition, the tenant’s behavior has negatively affected her daughter, who lives with her.

It should be noted that the landlord submitted a notarized affidavit from another occupant of the residential property (S.M.). However, given that the tenant disputes the landlord’s portrayal of the facts of this dispute, and given that S.M. did not attend to testify at the hearing, no evidentiary weight shall be given to the affidavit and it will not be considered.

The tenant testified that there has been an ongoing dispute between S. and himself for the last seven years. He broke off his friendship with S. about eight years ago, after incidents occurred when they started working together at Canada Post. There have been numerous complaints of harassment made by S. against the tenant, all of which were resolved and found to have unwarranted. Copies of correspondence from Canada Post were submitted into evidence.

S. has, according to the tenant, continued to pursue and harass him, using the police even. She has been relentless, even after a criminal case against the tenant was dismissed in 2017. A copy of the Provincial Court judgment was submitted into evidence. The tenant explained that the court decision show that S. is the aggressor.

The tenant recalled an incident on July 6 at 4:45 AM when he observed S. pull out a camera and start filming him whilst making homophobic slurs. While this behavior has occurred again and again, the tenant is “doing my best to ignore her.” He again observed the tenant filming him on July 10, and again thereafter. On July 20 the tenant was out for one of his daily walks and saw a third party (A.L.) yelling “stop harassing her!” More recently, on November 5, as the tenant approached the building, he heard S. from behind (“she has a very distinct voice . . . almost like a Newfie accent at times”), who began laughing and pointing at him, all the while filming him.

As for the incident on July 10, the tenant admitted that “I lost it that time.” S.’s ongoing conduct and behaviour toward him had finally “got under my skin” and that “I lost my cool.” He apologized to the landlords for the matters which they have had to deal with.

In their brief rebuttal the landlord testified that all of the incidents have occurred when the tenant was intoxicated. And perhaps he does not remember the incidents or how they transpired due to the intoxication. In summary, the landlord submitted that “it’s reprehensible and goes beyond previous incidents.”

### Analysis

Where a tenant applies to dispute a One Month Notice to End Tenancy for Cause, the onus is on the landlord to prove, on a balance of probabilities, the grounds on which the Notice is based.

In this dispute, the stated grounds for issuing the Notice are that

- (1) the tenant “significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property” ([section 47\(1\)\(d\)\(i\)](#) of the Act), and
- (2) the tenant “has failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so” ([section 47\(1\)\(h\)](#) of the Act).

Turning first to the second ground, namely, the breach of a material term of the tenancy agreement, there is no copy of any written notice that specifically mentions *what* material term of the tenancy agreement was breached. While the two “Caution Notice to Tenant” letters dated July 12, 2021 reference a breach to a material term, no actual explanation or specific term is referred to. If there is to a breach of a material term alleged, the landlord must specifically denote what that term is.

Given that the landlord did not reference any specific or actual material term that was being breached it follows that this ground on which the Notice was issued has not been proven.

Turning now to the first ground, namely, the significant interference or unreasonable disturbance caused to the other occupant (S.), I find that, even if S. is, or was, significantly interfered or unreasonably disturbed, it is wholly of S.’s own making. The pattern of S.’s behavior and conduct toward the tenant, including false accusations at work spanning many years, criminal charges that were ultimately dismissed in court, and the occupant’s ongoing, persistent filming of the tenant lead me to conclude that the tenant bears no fault in creating an alleged ground under section 47(1)(h) of the Act.

Quite frankly, I do not find the landlord’s witness’s testimony to be credible. The grainy 19-second-long video does not depict the tenant yelling, which contradicts the witness’ testimony in this regard. The witness referred to “quite a few incidents” and remarked that they happen “too often,” but was not able to provide any details of those many incidents. And, while the landlord appeared to have witnessed a few of these incidents involving the tenant’s alleged behavior, I am not satisfied that the landlord was significantly interfered with or unreasonably disturbed.

In short, taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has not met the onus of proving either of the grounds on which the Notice was issued.

Given the above, it is my finding that the tenant is entitled to an order cancelling the Notice. Therefore, the One Month Notice to End Tenancy for Cause, signed and issued on July 19, 2021, is hereby ordered cancelled effective immediately. The tenancy shall continue until it is ended in accordance with the Act.

Conclusion

**The application is hereby granted.**

**The One Month Notice to End Tenancy for Cause, signed and issued on July 19, 2021, is hereby ordered cancelled effective immediately. The tenancy shall continue until it is ended in accordance with the Act.**

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: December 2, 2021

---

Residential Tenancy Branch