



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, CNOP**

### Introduction

This review hearing dealt with the tenant's application pursuant to section 47 of the *Residential Tenancy Act* (the "Act") for cancellation of the landlord's 1 Month Notice to End Tenancy for Cause (the "1 Month Notice").

Both parties attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. The landlord was primarily represented by a family member (the "landlord").

The parties were made aware of Residential Tenancy Rule of Procedure 6.11 prohibiting recording dispute resolution hearings and the parties each testified that they were not making any recordings.

As both parties were present service was confirmed. The parties each testified that they received the respective materials and based on their testimonies I find each party duly served in accordance with sections 88 and 89 of the *Act*.

### Issue(s) to be Decided

Should the decision of December 23, 2021 be upheld, varied or replaced with a new decision?

### Background and Evidence

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the claim and my findings around each are set out below.

This periodic tenancy began on April 1, 2021 with a monthly rent of \$1,200.00 payable on the first of each month. A copy of the signed tenancy agreement was submitted into evidence. The rental unit is a detached coach house on the property with the landlord residing in the main house.

The landlord issued a 1 Month Notice to End Tenancy for Cause dated August 11, 2021 with an effective date of September 30, 2021. The reasons provided on the notice are:

- The tenant or a person permitted on the residential property by the tenant has
  - a. Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
  - b. Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - c. Put the landlord's property at significant risk;
- The tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that
  - a. Has caused or is likely to cause damage to the landlord's property,
  - b. Has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or
  - c. Has jeopardized or is likely to jeopardize a lawful right or interest of another occupant or the landlord;
- The tenant or a person permitted on the residential property by the tenant has caused extraordinary damage to the rental unit or residential property;
- The tenant does not repair damage to the rental unit or other residential property, as required under section 32(3), within a reasonable time;
- The tenant
  - a. Has failed to comply with a material term, and
  - b. Has not corrected the situation within a reasonable time after the landlord gives written notice to do so;

The tenant confirmed receipt of the 1 Month Notice on August 11, 2021 and filed their application for dispute resolution on August 20, 2021. The tenant disputes that there is any basis for the tenancy to end.

The landlord submitted a large volume of documentary evidence including screenshots of text conversations with the tenant, photographs, video footage, letters from neighbors and third-party companies called to examine damage to the rental unit. The landlord's primary testimony is that the tenant comes and goes from the rental unit at all hours and they are suspicious of the tenant and their guests. The landlord submits that the noise caused by the tenant and their guests at late hours have caused a disturbance to them and the other occupants of the rental property. The landlord testified that they and others have called the police to attend on a number of occasions.

The landlord also complains about the condition of the rental unit saying that it is filled with clutter which they believe poses a fire hazard. The landlord said they believe the smoke detector in the rental unit has been deactivated by the tenant. The landlord submits that the tenant has not repaired the damage to the rental unit over the course of the tenancy which has been noted during periodic inspections. The landlord further submits that the tenant has caused extraordinary damage to the plumbing through improper use and a plumber had to be called on several occasions. The landlord gave evidence that the tenant's guest has caused damage to the rental property by slamming a door on a planet hook.

The landlord further gave testimony about conflicts with the tenant's guests and submits that they have been threatened with bodily harm by one of the guests on multiple occasions.

The tenant disputes the landlord's submissions and says there is no basis for the issuance of the 1 Month Notice.

### Analysis

Section 47 of the *Act* provides that upon receipt of a notice to end tenancy for cause, the tenant may, within ten days, dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant files an application to dispute the notice, the landlord bears the burden to prove, on a balance of probabilities, the grounds for the 1 Month Notice.

The landlord must show on a balance of probabilities, which is to say it is more likely than not, that the tenancy should be ended for the reasons identified in the 1 Month Notice.

Based on the totality of the evidence, I find that landlord has not met their evidentiary burden on a balance of probabilities to establish that there is cause for this tenancy to end. I find the landlord's complaints about the tenant to be hyperbolic, subjective and insufficient to give rise to the issuance of a notice to end tenancy.

I find no evidence that the tenant or their guests have engaged in illegal activities. I find the suspicions of the landlord and neighboring witnesses that there is illegal activity is based on the hours of activity and their characterization of the individuals seen as being "suspicious" to be wholly subjective and insufficient to conclude that the tenant or their guests have engaged in illegal activity.

I find insufficient evidence that the tenant or their guests have caused unreasonable disturbance or interference with other occupants or the landlord. I find little evidence that the tenant or their guests are causing excessive noise when attending at the rental unit such that it could be considered disturbance. I give little weight on the evidence of the attendance of police at the rental property as it is open for anyone to make a complaint and have the police attend regardless of the underlying merits of the complaint.

I do not find the testimony of the landlord that they have been threatened with bodily harm by one of the tenant's guests to be particularly credible or supported in the materials. It is evident that the relationship between the parties is substantially less than cordial and if such utterances were made I find little evidence that these are serious threats to health and safety of individuals.

The landlord was given multiple opportunities in the hearing to provide substantive evidence of the tenant or their guests causing significant interference, unreasonable disturbance or serious jeopardy to health, safety or lawful rights of others. Despite being asked to provide some examples of incidents or details of their complaints the landlord's central submission is that the tenant and guests are suspicious individuals who come and go from the rental unit at odd hours. Similarly, I find that much of the statements from neighboring witnesses pertain to their characterization of the tenant and their guests. While there are some references to noise of fights between the tenant

and their guests and vehicular noise I find the incidents mentioned to be minor and more in the nature of general complaints.

Based on the evidence I am not satisfied that the condition of the rental unit or the tenant's use of the property can be reasonably characterized as extraordinary damage or at significant risk. I find the evidence of personal possessions in the rental unit to be disorganized but far from at a level that would pose a risk of damage to the rental unit. I find the landlord's concerns about fire hazards to have little support in the evidence. I find the observations of the landlord of occasional smells of smoke or the smoke detector being unplugged on occasions to be insufficient to conclude that there is a significant risk to the property.

I find the instances of plumbing issues and repairs to drains to be bothersome and cause the landlord to incur some costs of professional repairs, but not at the level where it would be reasonably considered to be extraordinary damage or a significant risk to property. While issues with plumbing and water inherently has the potential of causing additional water damage to the rental unit, I find the description of the issue provided by the third-party plumber in their written report to not rise to a degree to be reasonably considered extraordinary damage or a significant risk.

The landlord made no submissions on what terms of the tenancy agreement they believe to be material and there is little evidence that the landlord has given written notice to the tenant to correct these specific terms within a reasonable time.

Taken in its entirety I find the landlord has not met their evidentiary onus to establish that there is a basis for the tenancy to end. Consequently, I allow the tenant's application to cancel the 1 Month Notice. The notice is of no further force or effect. This tenancy continues until ended in accordance with the *Act*.

Conclusion

The decision of December 23, 2021 is replaced with the present decision.

The tenant's application is successful. The 1 Month Notice is cancelled and of no further force or effect. This tenancy continues until 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 *Residential Tenancy Act*.

Dated: January 27, 2022

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Residential Tenancy Branch