



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC LRE OLC MNDCT

### Introduction

The tenant applied to dispute two One Month Notices to End Tenancy for Cause (the “Notices” or “Notice”) pursuant to section 47(4) of the *Residential Tenancy Act* (“Act”). They also sought relief under sections 62, 67, and 70 of the Act. It appears that the tenant made an application for dispute resolution on November 29, 2021 and then made a further application for dispute resolution on December 13, 2021, after receiving the second Notice.

Both parties, along with an advocate for the tenant, and several witnesses, attended the hearing. No service issues were raised (with the exception of a few items, which are noted below), the parties who gave evidence were affirmed, and Rule 6.11 of the *Rules of Procedure* was explained.

### Preliminary Issue: Severing of Claims

Rule 2.3 of the *Rules of Procedure* states that “Claims made in the application must be related to each other. Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.”

In respect of these applications only the issue of whether the Notices are valid will be addressed. All remaining claims for relief are dismissed with leave to reapply; the tenant remains at liberty to reapply for these dismissed claims at a later time if he so wishes.

While the tenant and his advocate incorporated testimony and referred to evidence regarding the landlord’s alleged non-compliant entries or entry into the rental unit, there was insufficient time for the landlord to respond to these claims. As such, the claim for an order restricting the landlord’s entry into the rental unit (pursuant to section 70 of the Act) is dismissed with leave to reapply.

## Issue

Is the tenant entitled to a cancellation of either or both Notices to end tenancy?

## 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 issue of this dispute, and to explain the decision, is reproduced below.

At the outset, it is worth noting that the landlord issued a One Month Notice to End Tenancy for Cause on November 24, 2021 (the “First Notice”) and then they issued a second One Month Notice to End Tenancy for Cause on December 12, 2021 (the “Second Notice”). The First Notice included three grounds for why it was being given. The Second Notice included two grounds for why it was given; the grounds on the Second Notice are different from the three grounds provided on the First Notice.

Given the volume of evidence and number of grounds contained within the Notices, direction was provided to the landlord that while they had the right to address each and every ground included within the Notices, for expediency’s sake they were at liberty to simply address one, or a few, of the grounds.

The landlord (C.L.) remarked that he would address the primary concern which gave rise to issuing the First Notice. Namely, that the tenant repeatedly tampered with the smoke detector in the rental unit. By “tampered with” the landlord gave evidence that the tenant repeatedly removed the smoke detector, thereby giving rise to a likelihood of significant risk to the landlord’s property should there be a fire.

According to the landlord, there was an independent fire inspection (conducted by a third party which did not attend these proceedings) on October 4, 2021. The fire equipment in the 22-rental unit apartment building was checked, and the inspectors determined and found that the smoke detector in the tenant’s rental unit was detached from its base in the ceiling. The tenant was subsequently told to leave it alone, and to leave it attached to the ceiling.

A short while later, the windows in the rental unit and other units were replaced. During this installation the landlord was in the rental unit and observed the smoke detector again detached from where it should be. The landlord again told the tenant to stop removing, or detaching, the smoke detector.

At some point after the windows were installed, the landlord happened to be in the rental unit replacing blinds. With him was another tenant in the building (A.M.) who was assisting the landlord with the blind installation. The landlord and the witness noticed that the smoke detector was again unattached. At this point, the landlord felt that “enough was enough.”

In respect of the smoke detector, the landlord testified that it was part of a newer system that had been installed last year. The system would be replaced again in 2031. The smoke detector itself is connected to the electrical system but it has a battery backup. There is one smoke detector in each of the residential complex’s twenty-two units.

The landlord’s witness, A.M., testified that when he was with the landlord in the rental unit, he “saw the smoke detector ‘off the thing’” and disconnected. A.M. is another tenant in the building who, because the landlord is an older gentleman, assisted the landlord in putting up some blinds. As for the date on which he saw the smoke detector detached the witness could not recall.

The tenant’s advocate briefly cross-examined the landlord. In answer to a series of questions (which will not be reproduced) posed by the advocate, the landlord gave evidence that (1) there have always been smoke detectors of some sort in the building, and (2) there is a heat detector in the ceiling. Though, the landlord added, by the time the heat detector detects anything it is “too late” for any tenant still in the rental unit.

The tenant’s advocate then conducted a brief direct examination of the tenant. The tenant gave evidence that the tenant never recalled the landlord’s witness A.M. being in the rental unit to install blinds. However, he recalls A.M. being in the rental unit to replace wall plugs.

In her submissions, the tenant’s advocate argued that the whole cause for why the landlord is trying to evict the tenant is because of property risk. However, she noted that of the three instances of the smoke detector allegedly being disconnected, the first time was an observation made by a third party who was not a witness in this proceeding. The landlord’s witness could not recall the matter in a consistent manner and contradicted the landlord’s testimony about him being there to install blinds. Further, the advocate at first refers to the landlord’s evidence as the only reliable testimony, but she then noted further in her submission that even the landlord’s evidence is unreliable.

And, indeed, the advocate suggested that the witness’ “incredibly inconsistent” recollection goes to ulterior motivations for his being there in the rental unit.

The tenant's advocate referred to the tenant's statutory declaration in which the tenant requests that the smoke detector be repaired by the landlord. The smoke detector was "beeping non-stop." To this, the advocate submitted that the tenant made efforts to have the detector repaired and intended in good faith to have the smoke detector working.

After completing her introductory submissions, the advocate conducted a second, brief direct examination of the tenant. The tenant recalled the landlord coming into the rental unit in early October to replace the battery in the smoke detector. No one else was in the rental unit at that time, he added.

Regarding the smoke detector's performance, the tenant explained that it would start beeping when he did basic activities like boiling water. The smoke detector was, or has been, going off ever more frequently. It went off at one point when he was doing nothing more than boiling water and cooking potatoes in the microwave. Yet all that he does is keep pushing the little red button until the smoke detector stops beeping.

Turning to the issue of safety and risk of fire, the tenant testified that he has children, and that he takes steps to ensure their and his safety by keeping a fire extinguisher in the kitchen and another fire extinguisher in the living room. In addition, he undertakes a deep clean of the oven about three times a year.

The tenant further testified that he was "surprised" about the warning letter about the smoke detector because "it's always up. I don't take it down." The tenant explained that he received a warning letter from the landlord on November 22 and was issued the First Notice on November 24, 2021. He had received no previous warning letter about the smoke detector.

A witness for the tenant, M.S., testified that the tenant's smoke detector "goes off quite frequently." Indeed, the smoke detector goes off even if the tenant is doing nothing more than "boiling a pot of water for his tea." But the tenant does not remove the detector, rather, he simply pushes the button. She has "not once seen him remove [the smoke detector]." Last, she noted that while the noise can be disturbing – to the point that her young child starts crying when the beeping begins – it is important to leave smoke detectors installed and functioning.

In their final submissions the tenant's advocate stated that the tenant has never removed the smoke detector, even though it emits an annoying beeping. Irrespective of this fact, the advocate also submitted that the tenant takes steps to ensure the safety of

the rental unit by having two fire extinguishers. Last, there is, the advocate noted, a heat detector.

The advocate reiterated that the landlord's and their witness' evidence is unreliable. In addition, the advocate explained that the "actual" issue is that there is a personality conflict between the tenant and the landlord C.L. and that the landlord is simply trying to construct a case to make the tenant go away. The landlord is "throwing claims at the wall and hoping [some] will stick," she added. There was, apparently, a minor contretemps between the parties when the tenant went to see the landlord about the warning letter.

In his rebuttal and closing remarks the landlord reiterated that he found the smoke detector to be detached ("down") on four occasions. And, yes, while the witness may be confused about what he was doing in the rental unit, the smoke detector was not attached as it should have been. The photograph taken clearly shows "wires hanging down," he noted. And "each time I entered I saw the smoke detector down and I told him to leave it up." As for the minor row, the landlord remarked that the tenant had "got a little hot under the collar" when he received the warning letter. However, if a tenant does not comply with reasonable rules then "what else can a manager do?"

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

As the landlord confined their argument to the primary issue of the smoke detector, it is only the three grounds on which the First Notice was issued that shall be considered. For the purposes of the tenant's applications, the Second Notice is cancelled, as no evidence or testimony regarding the Second Notice was heard.

The First Notice (hereafter the "Notice") indicates on page two that the tenancy is being ended pursuant to section 47(1)(d) of the Act. All three checkboxes are ticked. While I appreciate that the wording as it appears on the Notice itself differs slightly from the relevant section of the Act, it is the wording as it appears in the Act that must be considered.

This section of the Act states that a landlord may end a tenancy by giving notice to end the tenancy when

- (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) seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant, or
  - (iii) put the landlord's property at significant risk;

In respect of the first ground indicated on the Notice (that is, the ground which mirrors subsection 47(1)(d)(i) of the Act), there is simply no evidence before me to establish that the tenant significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property. This ground is therefore not proven.

As for the second ground indicated on the Notice, no argument was put forward by the landlord to establish that the tenant at any point has seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant. Consequently, this ground is also not proven. (I pause for a moment to note that, while the landlord may have documentary evidence related to this and the first ground, given that the landlord's primary focus was on the matter of the smoke detector, it is on this single issue that I must consider the relevant evidence and apply the Act.)

As for the third and final ground, the landlord's argument was that there is a clear nexus between the tenant's repeated removal of the smoke detector and the tenant's putting the landlord's property at significant risk. This argument must be broken down into its two parts. First, did the tenant detach the smoke detector? Second, if it is found that he did, did that detachment put the property at significant risk?

The landlord claims that the tenant repeatedly (three or four times) detached the smoke detector. The tenant disputes this and testified that he never took it down.

When two parties to a dispute provide equally reasonable accounts of events or circumstances related to a dispute, the party making the claim has the burden to provide sufficient evidence over and above their testimony to establish their claim. In this case, I find that the landlord's photograph dated October 14, 2021 is sufficient evidence over and above their testimony to establish the claim that the tenant removed the smoke detector. While the tenant's advocate referred to the inconsistency of the

witness' evidence, particularly in respect of the reason why he was in the rental unit, this lapse in memory does not lead me to find that the tenant was also mistaken about seeing the smoke detector detached. The witness – not to mention the landlord who attended to the rental unit on more than one occasion – were not mistaken and had no problem recalling having seen the detector detached.

It is worth noting that, while the advocate referred to the landlord's and witness' inconsistent evidence, no issue of credibility of the parties were called into question. As such, no adverse findings of credibility will be addressed in this decision.

That having been said, I recognize the advocate's position that the landlord "seems to prefer that the tenant goes away," but, again, credibility in respect of the witness' evidence was not brought forward as an issue.

Second, having found that the tenant did, in fact, remove the smoke detector on at least one occasion, it must now be determined whether the tenant has, by removing the smoke detector, put the landlord's property at significant risk. It is my finding that the landlord has not proven this aspect of their case.

Certainly, while it is common knowledge that having a smoke detector reduces the risk of damage to life and property should there be a fire, the landlord made no case as to how the occasional (a possible maximum of four instances of the detector being removed) detachment of the smoke detector gave rise to a situation whereby the landlord's property was put at *significant* risk. Indeed, that the tenant has the good sense to keep not one, but two fire extinguishers in the rental unit, reduces any risk present.

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 the third ground on which the Notice was issued.

Accordingly, the Notice is cancelled, and the tenancy shall continue until it is ended in accordance with the Act.

Conclusion

**The tenant's applications are granted, in part.**

The One Month Notice to End Tenancy for Cause served on November 24, 2021 and the One Month Notice to End Tenancy for Cause served on December 12, 2021 are both hereby cancelled, and they are of no force or legal effect. The tenancy shall continue until it is ended in accordance with the Act.

This decision is made on delegated authority under section 9.1(1) of the Act.

Dated: January 21, 2022

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Residential Tenancy Branch