



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

**Dispute Codes**      CNC LRE FFT

### **Introduction**

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "**Act**") for:

- the cancellation of the One Month Notice to End Tenancy for Cause (the "**Notice**") pursuant to section 47;
- an order to suspend or set conditions on the landlord's right to enter the rental unit pursuant to section 70; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:45 am in order to enable the landlord to call into the hearing scheduled to start at 9:30 am. The tenant attended the hearing and was given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I used the teleconference system to confirm that the tenant and I were the only ones who had called into the hearing.

The tenant testified he served that the landlord's property manager personally with the notice of dispute resolution package and supporting documentary evidence on September 21, 2021. He submitted a statement he signed and had witnessed confirming this service. I find that the landlord was served with these documents on September 21, 2021, in accordance with section 88 and 89 of the Act.

### **Preliminary Issue – Effect of Landlord's Non-Attendance**

Rule of Procedure 6.6 states:

#### **6.6 The standard of proof and onus of proof**

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. 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.

The landlord bears the onus to prove that the Notice is valid. As the landlord failed to attend the hearing, I find that it is unable to discharge this onus. As such, I find that the Notice must be cancelled.

As it is his application, the tenant bears the onus to prove that he is entitled to an order to suspend or set conditions on the landlord's right to enter the rental unit and that he is entitled to the return of the filing fee. The landlord's failure to attend the hearing does nothing to change this.

As such, the balance of this decision will address these two issues.

### **Preliminary Issue – Spelling of Landlord's Name**

On the application, the tenant misspelled the landlord's name. The landlord is a corporate entity whose name includes a common word. This word was incorrectly spelled (spelled with an "o" in place of an "e"). With the consent of the tenant, I amend the application to correct the spelling of the landlord's name.

### **Issues to be Decided**

Is the tenant entitled to:

- 1) an order to suspend or set conditions on the landlord's right to enter the rental unit; and
- 2) recover the filing fee?

### **Background and Evidence**

While I have considered the documentary evidence and the testimony of the tenant, not all details of his submissions and arguments are reproduced here. The relevant and important aspects of the tenant's claims and my findings are set out below.

The tenant testified that he and the landlord's prior property manager entered into a written tenancy agreement starting December 1, 2017. He did not submit a copy of this agreement into evidence. The rental unit is the upper unit of a "four-plex". Monthly rent is \$1,200. The tenant paid the landlord a security deposit of \$600, which the landlord continues to hold in trust for the tenant.

The tenant testified that the landlord owner (“B”, first name on the cover of this decision; the tenant did not know his surname) yells, screams, and makes threats whenever he attends the residential property.

The tenant testified that on August 31, 2021, B attended the residential property. The tenant’s 20-year-old son, who is autistic, was playing in the front yard with a neighbour. The tenant testified that the B starting yell at his son, stating that he “wants them out” and that “he is the police”. The tenant testified his son was scared and retreated into the rental unit and called the police. B left the residential property before the police arrived. The tenant testified that the police told him that if B showed up at the residential property again, he would be arrested. The tenant did not submit any documents corroborating this incident (such as a statement from his son or neighbour, or a police report).

The tenant testified that B confronted him on September 16, 2018. He testified that B was yelling and screaming at him, and that he blamed the tenant for one of the other occupants of the residential property moving out. The tenant denied this was the case and testified that he is still on good terms with the other occupant. The tenant did not provide any documents corroborating this incident.

The tenant did not provide any other examples of B’s conduct in support of the order sought.

The tenant stated that he would like an order which would prohibit B from attending the residential property unless he was accompanied by the current property manager. He testified that when this occurs, B does not yell and scream at him.

## **Analysis**

Section 70 of the Act states:

### **Director's orders: landlord's right to enter rental unit**

70(1) The director, by order, may suspend or set conditions on a landlord's right to enter a rental unit under section 29 [*landlord's right to enter rental unit restricted*].

As stated above, the tenant bears the onus to prove that the landlord has acted in such a way so as to warrant his right to enter the rental unit be suspended or have restrictions set on it.

The tenant has not provided any corroboration of his testimony. Such corroboration should have been relatively easy to obtain (a statement from a neighbour, a copy of the Police report, text messages relating to incidents etc.). I find that the tenant’s testimony alone is not sufficient to discharge his evidentiary burden.

As such, I dismiss this portion of his application, with leave to reapply.

Pursuant to section 72(1) of the Act, as the tenant has been successful in the application, he may recover half of the filing fee (\$50) from the landlord.

Pursuant to section 72(2) of the Act, the tenant may deduct this amount of one future month's rent.

### **Conclusion**

I order that the Notice is cancelled and is of no force or effect. The tenancy shall continue.

I dismiss the tenant's application for an order suspending or setting conditions on the landlord's right to enter the rental unit, with leave to reapply.

I order that the tenant pay deduct \$50 from one future month's rent in satisfaction of my awarding him partial recovery of the filing fee.

I order the tenant to serve the landlord with a copy of this decision within three days of receiving it.

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 24, 2022

---

Residential Tenancy Branch