



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC, OLC, MNDCT, FFT

### Introduction

On September 3, 2021, the Tenant applied for a Dispute Resolution proceeding seeking to cancel a One Month Notice to End Tenancy for Cause (the “Notice”) pursuant to Section 47 of the *Residential Tenancy Act* (the “Act”), seeking an Order to comply pursuant to Section 62 of the *Act*, seeking a Monetary Order for compensation pursuant to Section 67 of the *Act*, and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

Both the Tenant and the Landlord attended the hearing. At the outset of the hearing, I explained to the parties that as the hearing was a teleconference, none of the parties could see each other, so to ensure an efficient, respectful hearing, this would rely on each party taking a turn to have their say. As such, when one party is talking, I asked that the other party not interrupt or respond unless prompted by myself. Furthermore, if a party had an issue with what had been said, they were advised to make a note of it and when it was their turn, they would have an opportunity to address these concerns. The parties were also informed that recording of the hearing was prohibited and they were reminded to refrain from doing so. All parties acknowledged these terms. As well, all parties in attendance provided a solemn affirmation.

The Tenant advised that she served the Landlord the Notice of Hearing package by hand on or around September 16, 2021 and the Landlord confirmed that she received this package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord has been duly served with the Notice of Hearing package.

She then advised that she served some evidence to the Landlord by hand on December 30, 2021 and then posted additional evidence to the Landlord's door on January 15, 2021. The Landlord confirmed that she received the Tenant's evidence on December 30, 2021. As this evidence was served in accordance with the timeframe requirements of Rule 3.14 of the Rules of Procedure (the "Rules"), I have accepted this documentary evidence and will consider it when rendering this Decision. However, as the Tenant's additional evidence was served late, I have excluded this documentary evidence and will not consider it when rendering this Decision.

The Landlord advised that she served her evidence to the Tenant by mail on December 7, 2021 and January 2, 2022 and the Tenant confirmed that she received this evidence. Based on this undisputed testimony, I am satisfied that the Landlord's evidence has been served in accordance with the timeframe requirements of Rule 3.15 of the Rules. As such, I have accepted all of the Landlord's documentary evidence and will consider it when rendering this Decision.

At the outset of the hearing, the parties were advised that as per Rule 2.3 of the Rules of Procedure, claims made in an Application must be related to each other, and I have the discretion to sever and dismiss unrelated claims. As such, this hearing primarily addressed issues related to the Notice to end tenancy, and the other claims were dismissed. The Tenant is at liberty to apply for any other claims under a new and separate Application.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

I note that Section 55 of the *Act* requires that when a Tenant submits an Application for Dispute Resolution seeking to cancel a notice to end tenancy issued by a Landlord, I must consider if the Landlord is entitled to an Order of Possession if the Application is dismissed and the Landlord has issued a notice to end tenancy that is compliant with the *Act*.

#### Issue(s) to be Decided

- Is the Tenant entitled to have the Notice cancelled?

- If the Tenant is unsuccessful in cancelling the Notice, is the Landlord entitled to an Order of Possession?
- Is the Tenant entitled to recover the filing fee?

### Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on July 12, 2020, that rent is currently established at \$400.00 per month, and that it is due on the first day of each month. A security deposit of \$200.00 was also paid. The Landlord did not create a written tenancy agreement despite being legally required to pursuant to the *Act*. The Landlord was reminded that a written tenancy agreement is documented proof of the terms of the tenancy, and it protects the parties in the event of any disputes. By foregoing this, the Landlord is inviting potential problems with any tenancies that she may engage in.

They also agreed that the Notice was served to the Tenant by being posted to the Tenant's door on August 25, 2021. The reasons the Landlord served the Notice are because the "Tenant has allowed an unreasonable number of occupants in the rental unit/site/property/park" and because the "Tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord and/or seriously jeopardized the health or safety or lawful right of another occupant or the landlord." The Notice indicated that the effective end date of the tenancy was September 30, 2021.

The Landlord advised that the Tenant hosted parties from the start of the tenancy until approximately October 2020. These parties would consist of seven to eight people and would occur about two to three times per week. She stated that she gave multiple verbal and written warnings, and the Tenant stopped having parties since October 2020.

She also advised that the Tenant would have her boyfriend stay overnight in the rental unit, approximately four times per week. She stated that this started in October 2020 and that she warned the Tenant that her boyfriend could not live in the rental unit. She submitted a number of documents to support the position that the Tenant's boyfriend has moved in.

The Tenant advised that she does not host parties, except for special occasions such as birthdays and that there have been no more than four people over at one time.

With respect to the issue pertaining to her boyfriend, she advised that the Landlord had previously been ok with her having people come to the rental unit, and these issues only became a problem when a dispute arose between the Tenant and another occupant of the property. She stated that her boyfriend only stays over approximately once a week as he has his own home. She referenced her documentary evidence to support her position.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

In considering this matter, I have reviewed the Landlord's Notice to ensure that the Landlord has complied with the requirements as to the form and content of Section 52 of the *Act*. In reviewing this Notice, despite the Landlord not indicating that the Tenant rents a specific room, as both parties agreed this was the case, I am satisfied that the Notice meets all of the requirements of Section 52 and I find that it is a valid Notice.

I find it important to note that a Landlord may end a tenancy for cause pursuant to Section 47 of the *Act* if any of the reasons cited in the Notice are valid. Section 47 of the *Act* reads in part as follows:

#### ***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:***

*(c) there are an unreasonable number of occupants in a rental unit;*

*(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*

With respect to the reasons on the Notice, when two parties to a dispute provide equally plausible 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. Given the contradictory testimony and positions of the parties, I must also turn to a determination of credibility. I have considered the parties' testimonies, their content and demeanour, as well as whether it is consistent with how a reasonable person would behave under circumstances similar to this tenancy.

To reiterate, the burden of proof is on the Landlord to present persuasive evidence that supports her position for ending the tenancy. Regarding the allegation of the Tenant having parties, as the Landlord confirmed that whatever parties she warned the Tenant about stopped in October 2020, I do not find it reasonable that the Landlord could serve a Notice almost a year later for these alleged infractions and reasonably attempt to end the tenancy.

Regarding the Landlord's allegations of the Tenant having an extra occupant living in the rental unit, I find it important to note that the Tenant is permitted to have guests stay in the rental unit, but the Tenant is not generally permitted to have a person move into the rental unit without the Landlord's consent. However, I do not find that the Landlord has provided sufficient or compelling evidence to support the conclusion that the Tenant has had an occupant move into the rental unit.

Furthermore, I am not satisfied that the Landlord has submitted sufficient evidence to substantiate that the Tenant or the Tenant's guest(s) have significantly interfered with or unreasonably disturbed another occupant or the Landlord, nor do I find that the Tenant or the Tenant's guest(s) have seriously jeopardized the health, safety, or lawful right of the Landlord or another occupant.

While it is not beyond the realm of possibility that the Tenant may be behaving in a manner that could jeopardize her tenancy, I am not satisfied that the Landlord has proven this on a balance of probabilities. As well, it appears as if there may be some sort of personality conflict between the Tenant and the other residents of the property

that may be causing some of the strife within the property. Regardless, it should be noted that the Tenant is reminded that any inappropriate future actions, or those of her guests, may potentially result in the jeopardization of her tenancy.

Based on my assessment of the totality of the evidence before me, as the burden of proof rests with the Landlord to support the reasons the Notice was served, I do not find that the Landlord has sufficiently substantiated the grounds for ending the tenancy. Ultimately, I am not satisfied of the validity of the Notice, and as a result, the Notice is of no force and effect.

As the Tenant was successful in her claim, I find that the Tenant is entitled to recover the \$100.00 filing fee paid for this Application. The Tenant is permitted to withhold this amount from the next month's rent.

### Conclusion

Based on the above, I hereby Order that the One Month Notice to End Tenancy for Cause of August 25, 2021 to be cancelled and of no force or effect. The tenancy shall continue 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 18, 2022

---

Residential Tenancy Branch