



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      CNC-MT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution, made on September 29, 2021 (the "Application"). The Tenant applied for more time to extend the time limit established by the *Residential Tenancy Act* (the "Act") to make an Application for dispute resolution to obtain an order cancelling a One Month Notice to End Tenancy for Cause, dated September 27, 2021 (the "One Month Notice"), pursuant to the *Act*.

The Tenant and the Landlord's Agents attended the hearing at the appointed date and time. At the start of the hearing, the parties confirmed service and receipt of their respective Application and documentary evidence packages. As such, I find the above mentioned documents were sufficiently served pursuant to Section 71 of the *Act*.

The parties were given an opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. 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

1. Is the Tenant entitled to an order cancelling the One Month Notice, pursuant to Section 47 of the *Act*?
2. If the Tenant is unsuccessful in cancelling the One Month Notice, is the Landlord entitled to an Order of Possession, pursuant to Section 55 of the *Act*?

Background and Evidence

The parties testified and agreed to the following; the tenancy began on June 1, 2015. Currently, the Tenant pays rent in the amount of \$320.00 and receives a subsidy in the amount of \$300.00 for a total of \$620.00 paid to the landlord on the first day of each month. The Tenant paid a security deposit in the amount of \$300.00, which the Landlord continues to hold.

The Landlord's Agents stated that they served the Tenant with the One Month Notice on September 27, 2021 with an effective vacancy date of October 31, 2021, by positing it on the door of the dispute address, as well as by Registered Mail. The Tenant confirmed having received the One Month Notice on September 27, 2021. The Landlord's reasons for ending the tenancy on the One Month Notice are;

*"The Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so."*

*"The Tenant or a person permitted on the property by the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk"*

The Landlord's Agent stated that the One Month Notice was served to the Tenant following in incident in which the Tenant assaulted another occupant with her cane. The Landlord's Agents stated that this incident violated the Landlord's conduct policy and crime free addendum. The Landlord provided a copy of a statement which was prepared by the occupant who had been assaulted. The Landlord also provided a picture of a bruised leg which the Agents stated was a result of the occupant being

struck by the cane. The Landlord's Agents stated that the Police attended and produced a file number in support.

The Landlord's Agent stated that the Tenant has demonstrated a pattern of consuming alcohol and taking part in late night activities which impacts the quiet enjoyment of other occupants. The Landlord's Agents stated that the other occupants are intimidated from coming forward and making statements against the Tenant. The Landlord provided written warnings which were issued to the Tenant dated 2017.

In response, the Tenant denied the incident took place. She denied hitting another occupant with her cane. The Tenant stated that she had a broken leg and hip, therefore, would not be in a position to assault someone. The Tenant stated everyone in the rental building consumes alcohol. The Tenant later acknowledged that there had been a verbal disagreement between her and the other occupant. The Tenant stated that she has not received any formal complaints in over 5 years.

### Analysis

Based on the documentary evidence and oral testimony provided during the hearing, and on a balance of probabilities, I find:

According to Section 47 (1) of the Act, a Landlord may end a tenancy by giving notice to end the tenancy for cause. In the matter before me, the Landlord has the burden of proof to prove that there is sufficient reason to end the tenancy.

The Landlord served the Tenant with a One Month Notice to End Tenancy for Cause on September 27, 2021 with an effective vacancy date of October 31, 2021, by posting it on the Tenant's door and by Registered Mail. The Tenant confirmed having received the notice on the same date. I find the One Month Notice was sufficiently served pursuant to Section 88 of the Act.

In this case, the Landlord is seeking to end the tenancy based on the fact that the Tenant has breached a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

According to the Policy Guideline #8; a material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To end a tenancy agreement for breach of a material term the party alleging a breach, whether landlord or tenant, must inform the other party in writing that there is a problem; that they believe the problem is a breach of a material term of the tenancy agreement; that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and, that if the problem is not fixed by the deadline, the party will end the tenancy.

I find that the Landlord did not communicate to the Tenant that her actions were a breach of a material term of the tenancy agreement, nor did they indicate that the problems needed to be fixed by a reasonable deadline or else the tenancy would end. For these reasons, I find that the Landlord did not provide adequate notice to the Tenant pursuant to section 45(3) of the *Act*.

The Landlord has also indicated on the Notice to End Tenancy that the Tenant has significantly interfered with or unreasonably disturbed another occupant or the Landlord, seriously jeopardized the health and safety or lawful right of another occupant or the landlord, and put the landlord's property at significant risk.

I find that during the hearing, the Landlord's Agents described an incident in which the Tenant assaulted another occupant. I accept that the Landlord provided a written statement which was provided by the occupant who was assaulted. The Tenant denied the incident took place, only confirming that a verbal disagreement took place. The Landlord's Agents stated that the other occupants are too intimidated to provide formal complaints or appear as witnesses to confirm the Tenants breaches.

In cases where the parties disagree on the details of an incident, it is important to provide supplemental evidence in support of the claims being made. In this case, the onus is on the Landlord to prove, on a balance of probabilities that the Tenant assaulted another occupant. While the Landlord's Agents stated that witnesses are too intimidated to come forward, I find that the Landlord has provided insufficient evidence to demonstrate that the Tenant has used intimidation to prevent others from submitting statements to support the Landlord's claims. I find that the Landlord has provided insufficient evidence to demonstrate that the tenancy should end based solely on the statement submitted.

Nevertheless, the Tenant is now warned that this behavior should not continue and that she should seek to calmly discuss her issues with the Landlord or their agents, rather than react in an inappropriate verbal or physical manner against another occupant. Increased

incidents of this type or any further escalation, may give the Landlord sufficient cause to end the tenancy.

In light of the above, I cancel the One Month Notice, dated September 27, 2021. I order the tenancy to continue until ended in accordance with the Act.

### Conclusion

The Tenant's application is successful. The One Month Notice issued by the Landlord dated September 27, 2021 is cancelled. The tenancy will 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: February 15, 2022

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Residential Tenancy Branch