



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      **CNC, LAT, OLC, FFT**

**OLC, FFT**

### Introduction

This hearing dealt with two applications filed by the tenant pursuant the Residential Tenancy Act (the "Act") for:

- An order to cancel a 1 Month Notice to End Tenancy for Cause, pursuant to sections 47 and 55;
  - Authorization to change the locks to the rental unit pursuant to section 31;
  - An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62;
  - Authorization to recover the filing fee from the other party pursuant to section 72.
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- An order for the landlord to comply with the Act, regulations or tenancy agreement pursuant to section 62; and
  - Authorization to recover the filing fee from the other party pursuant to section 72.

Both the tenant and the landlord attended the hearing. As both parties were present, service of documents was confirmed. The landlord acknowledged service of the tenant's applications for dispute resolution and the tenant acknowledged service of the landlord's evidence. Both parties stated there were no issues with timely service of documents.

The parties were informed at the start of the hearing that recording of the dispute resolution is prohibited under the Rule 6.11 of the Residential Tenancy Branch Rules of Procedure ("Rules"). The parties were informed that if any recording was made without my authorization, the offending party would be referred to the RTB Compliance Enforcement Unit for the purpose of an investigation and potential fine under the Act.

### Preliminary Issue

Rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure ("Rules") allow an arbitrator to consider whether issues are related and if they would be heard at the same time. Arbitrators may use their discretion to dismiss unrelated claims with or

without leave to reapply. At the commencement of the hearing, I advised the parties that I would dismiss the tenant's application seeking to "*remove the limit on overnight stays*" as I determined that issue to be unrelated to the primary issue of whether the notice to end tenancy should be upheld or cancelled. This portion of the tenant's application was dismissed with leave to reapply.

#### Issue(s) to be Decided

Should the 1 Month Notice to End Tenancy for Cause be upheld or cancelled?

Should the tenant be allowed to change the locks to the rental unit?

Should the landlord be ordered to comply with the *Act*, regulations or tenancy agreement?

Can the tenant recover the filing fee?

#### Background and Evidence

At the commencement of the hearing, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony pursuant to rule 7.4. In accordance with rules 3.6, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

The landlord gave the following testimony. The landlord purchased the building from a previous landlord with this tenant's tenancy agreement already in place with the previous landlord. This tenant had sublet the rental unit but returned to the tenancy on September 1, 2021 and the tenant signed a new tenancy agreement with this new landlord. The fixed term tenancy began on September 1, 2021, set to become month to month on August 31, 2022. Rent of \$925.00 is payable on the first day of each month.

On September 7<sup>th</sup>, the tenant emailed the landlord asking that he accept a housing subsidy from a third party and asks that the landlord complete the third party's form. The email gives two options to the landlord: either take the entire rent from the tenant via e-transfer and refund the tenant when the third party's subsidy comes in; or accept the third party's payment and reduce the tenant's rent by the subsidy amount. The landlord testified that he was willing to cooperate with the rent subsidy but he was not familiar with the concept and wanted to do more research as to legal and tax

implications and the extra burden associated with either refunding rent or keeping track of rent payments coming in from two sources. Eventually, the landlord agreed to the first option of monthly refunding the tenant the amount of rent paid by the third party because the third party is not named on the lease agreement.

On September 25th, the tenant served the landlord with a Notice of Dispute Resolution Proceedings, seeking the order for the landlord to comply with the *Act* seeking an order that the landlord to accept monthly subsidy payments for rent from the third party.

On the same day, the landlord sent an email to the tenant asking her not to slam the door when exiting the building. The landlord testified that the building is old and there is a fragile stained-glass window close to the exit used by the tenant. Both the tenant's and the landlord's entrances are close to the stained-glass window and the landlord can hear the tenant slamming the door repeatedly, potentially causing damage to the stained-glass window.

The tenant apologized in her email exchanges and states she was not aware that it could cause damage or that it was disrupting the peace of the landlord or any other tenants. She agrees to use the key to close the door in the future. The landlord testified that he thought everything was fine and the landlord took photos of the window for reference in case it got damaged in the future.

The landlord testified that upon being served with the tenant's application for dispute resolution and the email exchanges regarding the stained-glass window, the tenant served the landlord with an amendment to her original application for dispute resolution seeking further orders that the landlord comply with the *Act*.

In the amendment received by the landlord on September 25, the tenant writes:

*Landlord has become increasingly aggressive. He attempted to intimidate me into agreeing to a term in direct violation of the rules of the housing subsidy by leveraging our relationship ("our relationship will fail") (Sept 14/21), and threatening me with ungrounded/illegal statements ("Please be aware we will seek compensation for their fees [regarding involving a legal team if I bring this issue to the RTB] (Sept 14/21)). He continues to try to manipulate, guilt-trip, harass, intimidate, and threaten me in further discussions. He is now filing an incident report for shutting a door too hard despite me apologizing and offering to fix the door (Sept 25/21 ). likely in order to try to evict me. I have now submitted the dispute*

*resolution forms (Sept 25/21), and am afraid of what he'll do & say next. He lives in the suite 0.5 ft away from me, so I have no choice but to run into him to exit my suite. and have no idea what he'll do out of anger. I am afraid for my emotional and physical safety, and for him to deliver an eviction notice on the basis of things like closing a door too hard. I would also like him to remove the term of limiting my partner's overnight stays (or pay a fee). as this is homophobic.*

The landlord testified that this amendment caused great concern for him and his partner who co-manages the building with him. The landlord didn't want to be accused of intimidating the tenant, since he is twice her size. The landlord no longer felt secure in living next door to the tenant for fear of being accused of harassing the tenant or something worse. That night, the landlord and his spouse "took refuge" at a friend's residence, then moved themselves out because they didn't want more accusations from the tenant. The landlord testified that his health has been affected, corroborated by a note from his doctor. The landlord's spouse was also affected by having to take time off work to move out. The landlord contacted the police to file a police report to "help us in case of additional false claims". A copy of the police report was filed as evidence.

The landlord served the tenant with a 1 Month Notice to End Tenancy for Cause via email on October 23, 2021 which the tenant acknowledges receiving on that date. A copy of the notice to end tenancy was provided as evidence. It is signed and dated, provides the address of the rental unit and gives an effective date of November 30, 2021.

The reasons for ending the tenancy stated on the notice reads:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord;
2. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord;

Under "details of cause" the landlord writes:

*On Sep 25, harassment and fake accusations from the tenant unreasonably disturbed another occupant and the landlord, to the point of them having to involve the Police. The police suggested that both residents should remove themselves from the situation if they were able to. On Sep 26 both residents of unit 6 left the building and received refuge in a friend's property, thus [the tenant] interfered with the lawful*

*right of another occupant and the landlord. We are currently waiting for a copy of the police report.*

The landlord testified that subsequent to being served with the amendment from the tenant, he began to feel unsafe or at risk every time he visits the building, even though he manages it. He is uncomfortable with housing a tenant that falsely accuses him, jeopardizes his health and forces him from his home. The landlord now requires a second person accompany him as a witness when going to the building, due to the landlord's fear of being accused of anything by the tenant.

The tenant gave the following testimony. When signing the tenancy agreement with the landlord, she forgot to tell him about the third party providing partial rent payments. According to the tenant, that's when the problems began. The third party's policy is not to fund the tenant directly – they want to ensure the rent money they provide goes directly to the landlord. It's against their housing subsidy rules and jeopardizes the tenant's subsidy. The tenant testified that the third party has agreed to temporarily pay the rent subsidy directly to the tenant.

Since the issue of the rent subsidy arose, the landlord has been "rude" and harassing to her and made threats, such as telling the tenant that the relationship between them will fail. The tenant argues that she was trying to assert her rights, not be rude.

Regarding her application seeking to change the locks, the tenant acknowledged the landlord has never attempted to access her rental unit at any time, nor has the landlord sought access to the tenant's unit without proper notice.

### Analysis

The tenant acknowledges receiving the landlord's notice to end tenancy on October 23, 2021 and filed an application to dispute the notice within 10 days, on October 25, 2021, as required under section 47 of the *Act*.

If the tenant files the application, the landlord bears the burden to prove he or she has valid grounds to terminate the tenancy for cause. 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 Notice. In the matter at hand, the landlord must demonstrate:

1. the tenant or a person permitted on the property by the tenant has significantly interfered with or unreasonably disturbed another occupant or the landlord; or

2. the tenant or a person permitted on the property by the tenant has seriously jeopardized the health or safety or lawful right of another occupant or the landlord.

In this case, the “significant interference” or “unreasonable disturbance” to the landlord was the contents of the tenant’s amendment to her original application for dispute resolution. The landlord cites harassment and fake accusations as the primary reason for ending the tenancy with the tenant.

In the tenant’s amendment, the impetus for the notice to end tenancy, the tenant describes the landlord as “aggressive” and that the landlord “*continues to try to manipulate, guilt-trip, harass, intimidate, and threaten me in further discussions.*” Despite what was written in the amendment, I find the behaviour as described by the tenant does not closely match the tone, demeanour, or disposition of the landlord from the correspondences between the parties, provided in evidence by both sides. I find the landlord’s written communications with the tenant to be generally respectful and courteous. I find the landlord has the capacity to maintain decorum when facing the stressors involved in his job as a building owner/manager.

In his written statement, the landlord writes, “*One of our main concerns is that [the tenant] fabricates statements and falsely accuses us. Upon receiving our notice of eviction, Tarryn also filed a police report. On this report [the tenant] mentions we are acting aggressively and harassing other tenants as a mean to remove them given they have sub-market rates.*”

The landlord appears to have taken the comments in the amendment especially hard, causing him and his spouse to live elsewhere and bring additional people to their worksite when managing the property. It also led to what the landlord’s doctor describes as “*extreme anxiety caused by accusations made by a tenant in the building he owns*”. While the landlord may feel justified in ending the tenancy to alleviate his fear of being accused of wrongdoing by the tenant, I find this is to be an over-reactionary response. A tenant has the right to file for dispute resolution for what the tenant perceives as transgressions by the landlord, whether or not they are misperceptions made by the tenant. It is the role of the arbitrator to determine whether the tenant’s disputes hold merit.

I do not share the landlord’s belief that the tenant’s accusations against him as laid out in her amendment constitutes a significant interference or unreasonable disturbance to the landlord or other occupants of the building. I find the landlord’s choice to seek an

end to the tenancy reactionary and that the tenant did not significantly interfere with or unreasonably disturb the landlord or other occupants of the building.

I also find the tenant did not seriously jeopardize the health or safety or lawful right of another occupant or the landlord. While the landlord provided a letter from his doctor attributing “extreme anxiety” to what was written in the tenant’s amendment, I am not satisfied the anxiety felt by the landlord constitutes a serious jeopardization of his health, safety or lawful rights. It would be unreasonable for me to end this tenant’s tenancy just so the landlord would feel less anxious. As was discussed in the hearing, there are other ways for the landlord to reduce the potential for the tenant making false accusations against him, such as wearing a camera or recording device while working at the building.

I find the landlord has provided insufficient evidence to satisfy me the tenancy should end for the reasons stated in the notice to end tenancy and consequently, the 1 Month Notice to End Tenancy for Cause is cancelled and of no further force or effect.

The tenant’s second issue was seeking an order allowing her to change the locks to her rental unit. The tenant testified that there have been no attempts made by the landlord to access her unit in any way contrary to the *Act*, regulations or tenancy agreement. I find there are no grounds for me to grant this order and I dismiss this portion of the tenant’s application without leave to reapply.

The tenant also sought an order that the landlord sign the paperwork with the third party that funds part of her rent. There are no provisions in the *Act* or regulations that can compel me to make the landlord sign documents with the third party. Likewise, there is nothing on the tenancy agreement indicating that the landlord agreed to enter into any agreements with a third party regarding payment of rent. Consequently, I dismiss this portion of the tenant’s application seeking an order for the landlord to comply with the *Act*, regulations or tenancy agreement.

As the tenant’s application in cancelling the notice to end tenancy was successful the tenant is entitled to recover the filing fee for the application. In accordance with the offsetting provisions of section 72 of the *Act*, the tenant may reduce a single payment of rent owing to the landlord by \$100.00.

### Conclusion

The landlord’s notice to end tenancy is cancelled and of no further force or effect. The tenancy shall continue until it is 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 02, 2022

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Residential Tenancy Branch