



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC

### Introduction

On September 20, 2021 the Tenant filed an Application for Dispute Resolution, to challenge the Landlord issuing a One-Month Notice to End the Tenancy for Cause (the "One-Month Notice"). The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the "Act") on February 1, 2022.

Both parties attended the conference call hearing. I explained the process and both parties had the opportunity to ask questions and present oral testimony during the hearing.

### Preliminary Matter

The Tenant stated that they delivered notice of the dispute directly to the Landlord's office. The Landlord confirmed this delivery method.

In the hearing I confirmed with the Landlord that they did not submit material as evidence to the Residential Tenancy Branch for this hearing, and they did not provide evidence to the Tenant separately.

The copy of the One-Month Notice provided by the Tenant was illegible, particularly the details on the second page of that document. I allowed the Landlord the opportunity to provide a copy of that single document by the end of the day of the hearing. The Landlord provided 16 pages in total, of which 4 pages were the One-Month Notice. I did not ensure in the hearing whether other pages were previously disclosed or provided to the Tenant; without this assurance, I give these other pages no consideration. This is in the interests of procedural fairness to the Tenant.

### Issues to be Decided

Is the Tenant entitled to cancellation or withdrawal of the One-Month Notice issued by the Landlord on September 13, 2021?

If they are unsuccessful, is the Landlord entitled to an order of possession pursuant to s. 55 of the *Act*?

### Background and Evidence

The Tenant provided a copy of the tenancy agreement they signed on May 26, 2021. This was for the tenancy that started on June 6, 2021. They paid the rent of \$375 monthly. The tenancy agreement contains a clause on weekly housekeeping, where [the Tenant] cannot refuse the housekeepers from coming into your apartment on your designated housekeeping day". The Tenant initialled this clause.

One of the three addendums signed by the Tenant on that same day is titled 'Residential Tenancy Agreement Addendum for Crime Free Housing'; this prohibits criminal activity, a breach of which constitutes cause for ending the tenancy. There was also a 'Non-Smoking Addendum' which the Tenant signed, noting "smoking of any kind and any substance is NOT permitted on the rental property."

The Landlord issued the One-Month Notice on September 9, 2021, serving it to the Tenant in person on that date. This listed the following:

- Tenant or a person permitted on the property by the Tenant
  - significantly interfered with or unreasonably disturbed another occupant or the Landlord
  - seriously jeopardized the health or safety or lawful right of another occupant or the landlord
  - put the landlord's property at significant risk.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to damage the landlord's property.
- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the landlord.

- Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely jeopardize a lawful right or interest of another occupant or the landlord

The details section on the second page provides more information:

- the Tenant and a companion were unconscious in a vehicle at 3pm on July 5, 2021. 911 advised to rouse the driver and when awakened, they drove off. This same companion was observed to be staying in the rental unit on multiple occasions.
- “Non-compliance with policies regarding housekeeping entry on weekly basis.” Drug paraphernalia observed during housekeeping and RCMP.
- Disagreement with the caretaker about the Tenant’s behaviour.
- The Tenant’s child was “very aggressive and intimidating towards [the caretaker], making punching motions with his fist, and threatening him.”

In the hearing, the Landlord described the events listed in the One-Month Notice, as above. They listed events that transpired after the One-Month Notice service date, including a final warning for smoking, and an issue with payment of rent.

The Tenant responded to what they heard in the hearing. They were “sleeping in the car, not doing anything wrong” on July 5. They claimed to not know what the drug paraphernalia was about and described that they were out when housekeeping visited as scheduled, with housekeeping only needing the Tenant’s permission to enter which was granted.

A conflict arose between the Tenant and the caretaker. This apparently concerned a laundry card and resulted in the caretaker telling the Tenant to leave. The Tenant’s child asked the caretaker about the caretaker’s own gesture of punching their hand into their fist. To this, the caretaker walked away, and then informed the property manager that the Tenant’s child was threatening them. The Tenant asserted that the police did not contact them about this specific incident with the caretaker.

The Tenant’s witness in the hearing stated they observed the incident with the caretaker where the caretaker was primarily responsible for the incident on September 8, 2021.

### Analysis

The *Act* s. 47 provides various grounds for which a landlord may end a tenancy by issuing a One-Month Notice.

In this matter, the onus is on the Landlord to provide they have cause to end the tenancy. On my review, they have not provided sufficient evidence to prove the details they indicate on page 2 of the One-Month Notice. There is both a lack of quality and quantity of necessary evidence to overcome the burden of proof here.

There is no illegal activity in what the Landlord described, minus further details on that. If the Landlord is alluding to drug paraphernalia observed in the rental unit, that is not in itself illegal activity. If they are describing the Tenant sleeping in the vehicle in the afternoon of July 5, it is not described as an illegal activity by the Landlord here. It is not known if that incident involved impaired driving or infringement of some bylaw. This eliminates three of the reasons selected by the Landlord on the One-Month Notice from consideration.

There is insufficient evidence on the Tenant not allowing housekeeping entry. It is not known whether that is a regularly scheduled event or required special notice. The Landlord did not express this in terms of a violation of the tenancy agreement, and it is not known the number of times entry was refused, or the dates. It is not clear if the lack of housekeeping puts the property at risk, or jeopardized others' health or safety.

The Landlord did not provide a first-person account from the caretaker who had the conflict with the Tenant. That would have been more accurate information and evidence than what the Landlord provided here, which exists only as hearsay on the most consequential piece of their account, where alleged threats were made by the Landlord's child. As such, with the Tenant describing their version of events in a first-person account, and with that of a witness, I give more weight to the Tenant's version of events. I find it more likely than not that the caretaker was at least equally complicit, or the source of the conflict with them and the Tenant. For the lack of accurate information on that incident, I do not see how the Tenant's conduct amounts to unreasonable disturbance or was jeopardizing the health, safety, or lawful right of another person.

Without more detail on specific incidents from the Landlord, I find the One-Month Notice is not valid. The Landlord has not met the burden of proof; I so order the One-Month Notice cancelled.

Conclusion

For the reasons above, I order the One-Month Notice issued on September 9, 2021 is cancelled and the tenancy remains in full force and effect.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: February 9, 2022

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Residential Tenancy Branch