



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **CNC, MNDCT, FFT**

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution under the *Residential Tenancy Act* ("Act"). The Tenant applied for:

- cancellation of a One Month Notice to End Tenancy for Cause dated December 20, 2021 ("First 1 Month Notice") pursuant to section 66;
- cancellation of a One Month Notice to End Tenancy for Cause dated December 21, 2021 ("Second 1 Month Notice") pursuant to section 66
- an order for \$37.68 for compensation for the Tenant's loss or money owed by the Landlords pursuant to section 67; and
- authorization to recover the Tenant's filing fee for this application from the Landlords pursuant to section 72.

The Tenant and the two Landlords ("WM" and FM") attended the hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The Tenant stated he served the NDRP on the Landlords by email on January 7, 2022, and again by email on January 9, 2021. FM stated the Landlords received the two emails but page 4 of the NDRP was missing. FM stated she called the Residential Tenancy Branch ("RTB") and a courtesy copy of the NDRP was emailed by the RTB to the Landlords. Accordingly, the Landlords received the missing page 4 of the NDRP. I find that the NDRP was sufficiently served pursuant to section 71(2)(b) of the Act.

### Preliminary Matter – Severance and Dismissal of Tenant's Claim

The Tenant's application made a monetary claim for compensation from the Landlords for \$37.68.

Rule 2.3 of the *Residential Tenancy Branch Rules of Procedure* states:

**2.3      Related issues Claims made in the application must be related to each other.**

Arbitrators may use their discretion to dismiss unrelated claims with or without leave to reapply.

The most important issue in the Tenant's application is to address whether the First and Second 1 Month Notices should be cancelled. I find the Tenant's claims for compensation of \$37.68 from the Landlords is unrelated to the Tenant's claim for cancellation of the First and Second 1 Month Notices. Based on the above I dismiss, with leave to reapply, the Tenant's claim for compensation of \$37.68 from the Landlords.

### Issues to be Decided

- Is the Tenant entitled to cancellation of the First 1 Month Notice?
- Is the Tenant entitled to cancellation of the Second 1 Month Notice?
- Is the Tenant entitled to recover the filing fee of his application from the Landlords?
- If the Tenant is not entitled to cancellation of the First and Second 1 Month Notices, are the Landlords entitled to an Order of Possession pursuant to section 55(1) of the Act?

### Background and Evidence

While I have turned my mind to all the accepted documentary evidence and the testimony of the parties, only the details of the respective submissions and/or arguments relevant to the issues and findings in this matter are reproduced here. The principal aspects of the Tenant's application and my findings are set out below.

FM stated the tenancy commenced on April 15, 2020 for a fixed term ending April 15, 2021, and then continued on a month-to-month basis. The Tenant is required to pay

\$2,300.00 per month on the 1<sup>st</sup> of each month. The Tenant was required to pay a security deposit of \$1,150.00. FM stated the Tenant has rental arrears of \$2,300.00 as his post-dated cheque for the February 2022 rent was returned NSF.

FM stated the Landlords served the First 1 Month Notice on the Tenant's door on December 20, 2021. FM stated the Landlords served the Second 1 Month Notice on the Tenant's door on December 21, 2021. I find the First and Second 1 Month Notices were served on the Tenant in accordance with section 88 of the Act.

FM testified the Tenant had a loud party in contravention of paragraph 22 of the House Rules appended to the tenancy agreement. FM stated the party disturbed neighbours around the residential property. When I asked, FM stated that the Landlords did not serve the Tenant with a written warning that the Tenant was in breach of a term of the tenancy agreement prior to serving him with the First and Second 1 Month Notices. FM also admitted the Landlords do not occupy any part of the residential property and there are no other occupants, other than the Tenant's guests, residing on the residential property.

FM also stated that, as the Tenant had an occupant in the rental unit, the Tenant had assigned or sublet the rental unit without the Landlord's consent. FM did not provide any evidence, or call any witnesses, to corroborate her statement that the Tenant had moved out of the rental unit pursuant to a sublet arrangement or that the Tenant had assigned the tenancy agreement to a third party. FM stated the Tenant made inquiries about obtaining the Landlords' permission for his fiancé to move into the rental unit and the Landlords told the Tenant to let them know before she moved in. FM stated the Tenant had someone living in the rental unit without obtaining the consent from the Landlords. When I asked, FM admitted the Landlords were not aware of the Tenant having moved out of the rental unit pursuant to either a sublet arrangement or an assignment of the tenancy agreement to a third party. FM admitted the tenancy agreement does not have a prohibition against the Tenant having additional occupants in the rental unit nor does the tenancy agreement require the Tenant to obtain the Landlords' prior consent to for the Tenant to have additional occupants in the rental unit.

FM stated that the Tenant had committed an illegal activity because the Tenant has violated the noise bylaws of the municipality in which the residential property is located. FM stated the Tenant had a party on December 19, 2021, lasting into the morning of December 2021, that disturbed the peace and quiet enjoyment of the neighbourhood. FM stated the RCMP were called by neighbours to attend at the residential property because of the noise caused by the party.

FM stated WM discovered, while attending at the rental unit to take delivery of a new refrigerator, that the handle to a stove had been broken off. FM stated this was additional grounds to end the tenancy for cause.

The Tenant testified his uncle stays with some for several days at a time. The Tenant stated that, other than for himself and his guests, the Landlords do not live in any part of the residential property and there are no other occupants occupying any part of the residential property. The Tenant admitted he did have a party that disturbed some of the neighbours living on properties adjacent to the residential property. The Tenant stated he has not moved out of the rental unit at any time during the tenancy. The Tenant denied the Landlords' allegations that he has sublet the rental unit or assigned the tenancy agreement to a third party.

### Analysis

Subsection 47(1)(d) of the Act states in part:

47(1) A landlord may end a tenancy by giving notice to end the tenancy if one or more of the following applies:

[...]

(e) the tenant or a person permitted on the residential property by the tenant has engaged in illegal activity that

[...]

(ii) has adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property, or

[...]

(i) the tenant purports to assign the tenancy agreement or sublet the rental unit without first obtaining the landlord's written consent as required by section 34 *[assignment and subletting]*;

[...]

(2) A notice under this section must end the tenancy effective on a date that is

- (a) not earlier than one month after the date the notice is received, and
  - (b) the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.
- (3) A notice under this section must comply with section 52 *[form and content of notice to end tenancy]*.
- (4) A tenant may dispute a notice under this section by making an application for dispute resolution within 10 days after the date the tenant receives the notice.
- (5) If a tenant who has received a notice under this section does not make an application for dispute resolution in accordance with subsection (4), the tenant
  - (a) is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice, and
  - (b) must vacate the rental unit by that date.

The First 1 Month Notice was served on the Tenant's door on December 20, 2021. Pursuant to section 90 of the Act, the Tenant was deemed to have been served with the First 1 Month Notice on December 23, 2021. Pursuant to section 47(4), the Tenant had until January 4, 2022, being the first business day after the expiry of the 10-day dispute period to dispute the First 1 Month Notice. The Second 1 Month Notice was served on the Tenant's door on December 21, 2021. Pursuant to section 90, the Tenant was deemed to have received the Second 1 Month Notice on December 24, 2021. Pursuant to section 47(4), the Tenant had until January 4, 2022, being the first business day after the expiry of the 10-day dispute period to dispute the Second 1 Month Notice. The records of the RTB disclose the Tenant made his application on December 23, 2021. Accordingly, the Tenant's application to dispute the First and Second 1 Month Notices was made within the 10-day dispute period required by section 47(4) of the Act.

Section 47(3) of the Act requires that a One Month Notice given under section 47(1) of the Act must comply with section 52 of the Act. Section 52 of the Act states:

- 52 In order to be effective, a notice to end a tenancy must be in writing and must
- (a) be signed and dated by the landlord or tenant giving the notice,
  - (b) give the address of the rental unit,

- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

Page 2 of the First 1 Month Notice did not have any of the check boxes marked off to indicate the cause or causes for ending the tenancy. As such, the First 1 Month Notice did not comply with the requirements of section 52(d) of the Act. As the First 1 Month Notice did not comply with section 47(3) of the Act, the First 1 Month Notice was not effective. Based on the above, I cancel the First 1 Month Notice.

On the Second 1 Month Notice, the Landlords indicated the following causes to end the tenancy:

1. 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 or the landlord; and
2. Tenant has assigned or sublet the rental unit/site/property/park without landlord's written consent.

The Second 2 Month Notice provides the following details of the causes:

On December 19 and into the morning of December 20, 2021, the Tenant, [Name of Tenant] created an unreasonable noise, disturbing the peace and quiet of the neighbourhood, in the form of a large party that included loud music, to such a level that police were required to be in attendance in the early morning of December 20, 2021.

Tenant agreed to and signed addendum named "House Rules" at the start of the tenancy. It clearly states: "22. NO LOUD or LARGE PARTIES of any kind are to be held on the property. The tenants are responsible for their guest's conduct at all times and [sic] any damage they may cause. The tenants shall not disturb, harass or annoy the neighbors and shall not have loud conversations, music, TV or other irritating noises to disturb the peaceful enjoyment at any time and shall be quiet

between 9 pm and 9 am. Failure to comply can result in short notice to vacate the premises.”

The Tenant has engaged in illegal activity as he was in contravention of local bylaws. THE [Name of City in which rental unit is located] BYLAW 2018 PROHIBITIONS: [Number of Bylaw] No person shall make, cause, or permit to be made or caused any noise or sound which is liable to disturb the quiet, peace, rest, enjoyment, comfort, or convenience of individuals or the public. [Number of Bylaw] Without restricting the generality of the foregoing, no person shall e)play or operate or permit to be played or operated any radio, gramophone, or other instrument or any apparatus for the production or amplification of sound in a manner; or f) shout, use megaphones, or make any other noise in or at or on streets; that is liable to disturb the quiet, peace, rest, enjoyment, comfort or convenience of individuals or the public.

During the hearing, FM gave testimony and submissions of other causes for ending the tenancy that were not listed as causes for ending the tenancy on the Second 1 Month Notice. As the Landlords did not check those additional causes on the Second 1 Month Notice, the Landlords may not rely on them to end the tenancy under section 47(1) of the Act. As such, I will not address those additional causes the Landlords submitted at the hearing and will only consider the causes indicated on the Second 1 Month Notice.

FM stated the Tenant had a party on December 19, 2021 which continued into the morning hours of December 20, 2021 that disturbed the neighbours of the residential property. FM stated the police attended at the residential property as a result of the noise from the party. FM submitted the Tenant, and persons permitted on the residential property engaged in illegal activity that adversely affected the quiet enjoyment of the neighbourhood. FM also submitted the noise from the party violated the bylaws of the municipality in which the residential property is located.

*Residential Tenancy Branch Policy Guideline 32* ("PG 32) states in part:

The term "illegal activity" would include a serious violation of federal, provincial or municipal law, whether or not it is an offense under the Criminal Code. It may include an act prohibited by any statute or bylaw which is serious enough to have a harmful impact on the landlord, the landlord's property, or other occupants of the residential property.

The party alleging the illegal activity has the burden of proving that the activity was illegal. Thus, the party should be prepared to establish the illegality by providing to the arbitrator and to the other party, in accordance with the Rules of Procedure, a legible copy of the relevant statute or bylaw.

*Despite the provisions of the Legislation with respect to illegal activities, the parties may agree that one or more specified activities, if conducted in the rental unit or on the residential property may be considered a basis for ending the tenancy. In that event, the ground for ending the tenancy would not be illegal activity. The ground for terminating the tenancy would be material breach of the tenancy agreement. Whether or not the landlord would be successful in ending the tenancy for such specified activity or activities would depend on whether or not an arbitrator was to find that such a breach was both material and that the term of the tenancy agreement which was breached was not itself unconscionable.*

[emphasis in italics added]

FM admitted there are no other occupants of the residential property other than for the guests of the Tenant. I find that, as there are no other occupants of the residential property, other than for the Tenant's own guests, there has not been a breach of section 47(1)(e)(ii) of the Act. Furthermore, section 47(1)(e)(ii) of the Act does not extend to interference or disturbance caused by a tenant on occupants of other neighbouring properties that are not owned by the Landlords. Although the Tenant may have breached a term of the "House Rules", this does not make the breach of the House Rules an "illegal activity" for the purposes of section 47(1)(e)(ii) of the Act. As stated in PG 32, the ground for terminating the tenancy in those circumstances would be on the basis of a material breach of the tenancy agreement. Whether or not the Landlords would be successful in ending the tenancy for such specified activity or activities would depend on whether or not an arbitrator was to find that such a breach was both material and that the term of the tenancy agreement which was breached was not itself



unconscionable. Based on the above, I find the Landlords have not proven, on a balance of probabilities, that the Tenant has breached section 47(1)(e)(ii) of the Act.

FM stated the Tenant has assigned or sublet the rental unit without the Landlords' written consent. FM did not submit any evidence or, call any witnesses to corroborate her statement, that the Tenant has sublet or assigned the rental unit without the consent of the Landlords. The Tenant stated he is living in the rental unit and that he has not sublet or assigned the tenancy agreement to a third party. In the absence of corroborating evidence from the Landlords, I prefer the testimony of the Tenant and find the Tenant has not assigned or sublet the rental unit. I find the Landlords have not proven, on a balance of probabilities, that the Tenant has breached section 47(1)(i) of the Act.

I find the Landlords have failed to establish the Tenant has breached sections 47(1)(e)(ii) and 47(1)(i) of the Act. As such, the Second 1 Month Notice was not issued for a valid cause. Based on the above, I cancel the Second 1 Month Notice and it is of no force or effect.

As the Tenant has been successful in his application, I grant the Tenant recovery of the filing fee of \$100.00 pursuant to subsection 72(1) of the Act. Pursuant to section 72(2)(a) of the Act, the Tenant is allowed to enforce this order by deducting \$100.00 from the next month's rent, notifying the Landlords when this deduction is made. The Landlords may not serve the Tenant with a 10 Day Notice to End Tenancy for Unpaid Rent when this deduction is made by the Tenant.

### Conclusion

The First and Second 1 Month Notices are cancelled and of no force or effect.

The Tenant is ordered to deduct \$100.00 from next month's rent in satisfaction of his monetary award for recovery of the filing fee.

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 22, 2022

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Residential Tenancy Branch